

No. 472

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

HERMAN CRAMER,

Plaintiff in Error,

vs.

SINGER MANUFACTURING COM-
PANY,

Defendant in Error.

TRANSCRIPT OF RECORD.

In Error to the United States Circuit Court, Ninth
Judicial Circuit, Northern District of
California.

FILED

SEP 27 1898

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*In the Circuit Court of the United States for the Northern
District of California.*

Of the July Term of said Court of the Year One Thousand
Eight Hundred and Ninety-six.

Declaration.

United States of America, }
Northern District of California. } ss.

Herman Cramer, of the town of Sonora, in the county of Tuolumne, State of California, and a citizen of the said State of California, plaintiff in this action, by John H. Miller, his attorney, complains of the Singer Manufacturing Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, of a plea of trespass on the case.

For that at all times hereinafter mentioned the Singer Manufacturing Company aforesaid was and is now a corporation organized and existing under and by virtue of the laws of the State of New Jersey, but doing business and having a managing and business agent at the city and county of San Francisco in the State of California.

And for that heretofore on and prior to the 25th day of May, A. D. 1882, plaintiff was the original and first inventor of a certain new and useful invention, to-wit, an improvement in treadles for sewing-machines, more fully and at large described in the letters patent issued

therefor by the government of the United States as hereinafter alleged, as will more fully appear from the said letters patent to which special reference is hereby made.

And for that the said invention was a new and useful one, and was not known or used by others in this country, nor patented, nor described in any printed publication in this or any foreign country prior to the invention thereof by the plaintiff, and at the time of his application for letters patent therefor as hereinafter alleged the same had not been in public use or on sale in the United States for two years, nor abandoned, nor has the same ever been abandoned.

And for that the said plaintiff, being, as aforesaid, the inventor thereof, did, on the 25th day of May, A. D. 1882, make application to the government of the United States for the issuance to him of letters patent for said invention, and thereafter, to-wit, on the 30th day of January, A. D. 1883, after proceedings duly and regularly had and taken in the matter of said application, letters patent of the United States were granted, issued, and delivered to the said plaintiff for the said invention, granting and securing to him, his heirs and assigns, for the full term of seventeen years from said last-mentioned day, the sole and exclusive right to make, use, and vend the said invention throughout the United States of America and the territories thereof.

And for that said letters patent were issued in due form of law under the seal of the patent office of the United States, signed by the secretary of the interior and countersigned by the commissioner of patents of the United

States, and bear date the day and year last aforesaid, to-wit, the 30th day of January, A. D. 1883, and are numbered 271,426, all of which will more fully appear by the said letters patent, which are ready in court to be produced by the plaintiff, or a duly authenticated copy thereof, and of which he hereby makes profert.

And for that prior to the issuance of said letters patent all proceedings were had and taken which were required by law to be had and taken prior to the issuance of letters patent for new and useful inventions.

And for that ever since the issuance of said letters patent the plaintiff has been continuously, and is now, the sole and exclusive owner and holder of said letters patent, and of all the rights, liberties, and privileges by them granted and conferred throughout the entire United States of America and the territories thereof.

And for that since the issuance of said letters patent in the exercise of the rights and liberties by them granted, the plaintiff has made, used, and sold the device so patented, and has practiced the said invention, and has had and maintained, until the infringement hereinafter complained of, possession of the said invention under and by virtue of the said letters patent, and has never acquiesced in any invasion or infringement of his said rights.

Yet notwithstanding the premises, the defendant herein, having full knowledge thereof, and in violation of the exclusive rights and privileges secured to the plaintiff by said letters patent, and utterly disregarding the same, and contriving and intending to injure and damage the

plaintiff, from and since the day of the issuance of said letters patent, to-wit, the 30th day of January, A. D. 1883, and continuously, without the cessation of a single day, and uninterruptedly from said day up to the time of the commencement of this action, without the license or consent of plaintiff, but contrary thereto, in the State of California and the Northern District thereof, and in various and sundry other States and territories of the United States of America has wrongfully and unlawfully made, used, and sold large numbers of sewing-machines containing and embracing the invention described, claimed, and patented in and by said letters patent.

That said machines so made, used, and sold by the defendant were and are an infringement upon the said letters patent No. 271,426, and were made according to the specification thereof, contrary to law and the form, force, and effect of the statutes of the United States in that behalf made and provided.

Whereby, and by reason of the premises and the infringement aforesaid, the plaintiff has been greatly injured and damaged and deprived of large royalties, license fees, gains, and profits which he would have derived from the practice of said invention, and has sustained actual damages thereby in a large sum, to-wit, two hundred and fifty thousand (\$250,000) dollars.

Wherefore, by force of the statutes of the United States, a right of action has accrued to plaintiff to recover the said actual damages, and such additional amount not exceeding in the aggregate three times the amount of such actual damages, as the Court may see fit to adjudge, besides costs of suit.

Yet the defendant, though often requested, has never paid the same or any part thereof, but has refused, and still does refuse, so to do, and therefore plaintiff brings this action.

JOHN H. MILLER,
Attorney for Plaintiff.

NOWLIN & FASSETT,
Of Counsel for Plaintiff.

United States of America,
Northern District of California,
City and County of San Francisco. } ss.

Herman Cramer, being duly sworn, deposes and says that he is the plaintiff in the within entitled action; that he has read the above and foregoing declaration and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters, that he believes it to be true.

HERMAN CRAMER.

Subscribed and sworn to before me this 8th day of October, 1896.

[Seal] F. C. MOSEBACH,
Notary Public, in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed October 8, 1896. W. J. Costigan,
Clerk. By W. B. Beaizley, Deputy Clerk.

UNITED STATES OF AMERICA.

*Circuit Court of the United States, Ninth Circuit, Northern
District of California.*

HERMAN CRAMER,

Plaintiff,

vs.

SINGER MANUFACTURING
PANY,

COM-

Defendant.

Action brought in
the said Circuit Court
and the complaint
filed in the office of
the clerk of said Cir-
cuit Court, in the
city and county of
San Francisco.

Summons.

The President of the United States of America, Greeting,
to Singer Manufacturing Company, Defendant.

You are hereby required to appear in an action brought
against you by the above-named plaintiff, in the Circuit
Court of the United States, Ninth Circuit, in and for the
Northern District of California, and to file your plea,
answer, or demurrer to the complaint, in the city and
county of San Francisco, within ten days after the ser-
vice on you of this summons, if served in this county; or
if served out of this county, then within thirty days, or
judgment by default will be taken against you.

The said action is brought to recover \$250,000 damages
alleged to have been sustained by plaintiff from the in-
fringement by you upon letters patent of the United
States No. 271,426, dated January 30, 1883, for an im-
provement in treadles for sewing-machines, said patent
being owned by plaintiff, as more fully appears from the
complaint on file, to which reference is made, and if you

fail to appear and plead, answer or demur, as herein required, your default will be entered and the plaintiff will apply to the Court for the relief demanded.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this 8th day of October, in the year of our Lord one thousand eight hundred and ninety-six, and of our Independence the 121st.

[Seal]

W. J. COSTIGAN, Clerk.

By W. B. Beazley, Deputy Clerk.

United States Marshal's Office, }
Northern District of California }

I hereby certify that I received the within writ on the 8th day of October, 1896, and personally served the same on Singer Mfg. Co. on the 8th day of October, 1896, by delivering to, and leaving with, Willis B. Fry, managing agent of said Singer Mfg. Co., said defendant named therein, personally, at the city and county of San Francisco, in said District, a certified copy thereof, together with a copy of the complaint, certified to by plaintiff's attorney attached thereto.

San Francisco, October 9th, 1896.

BARRY BALDWIN,

U. S. Marshal.

By T. J. Gallagher,

Deputy.

[Endorsed]: Filed Oct. 9th, 1896. W. J. Costigan, Clerk. By W. B. Beazley, Deputy Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

HERMAN CRAMER,

Plaintiff,

vs.

SINGER MANUFACTURING COM-
PANY (a Corporation),

Defendant.

No. 12,259.

Answer.

Comes now the defendant above named, the Singer Manufacturing Company, by its attorneys, Messrs. Wheaton, Kalloch & Kierce and Chas. K. Offield, without waiving its objection heretofore taken to the jurisdiction of this Court over it, but hereby expressly continuing and maintaining and now renewing its objection to the taking of jurisdiction over the defendant in this case by this Court, and hereby expressly reserving its exception to the taking of jurisdiction over it by this Court, and denies generally and specifically each and every allegation contained in plaintiff's declaration on file herein, and says that the defendant is not guilty of the grievances in said declaration charged against it, nor of any of them, nor of any part thereof, and of this the defendant puts itself upon the country.

Further answering this defendant admits that it is, and at all times in said declaration mentioned was, a corporation organized and existing under the laws of the

State of New Jersey, and avers that its factories and manufacturing works are situated in the said State of New Jersey and in the District of New Jersey; and that its place of residence is in the said State and District of New Jersey, and that it has no factories, manufacturing works, nor plant in the State of California or in the Northern District of California, and that its principal place of business is not in said State or Northern District of California, and that its place of residence is not in said State or Northern District of California. That in the ordinary conduct of its business the defendant is engaged in selling throughout all the States and territories of the United States sewing-machines made at its said factories in the State of New Jersey, and that it employs agents and salesmen in a very large number of cities and towns in the United States and territories thereof, whose sole business it is to receive and distribute and sell sewing-machines consigned to them from the defendant's said factories in New Jersey, according to directions and instructions which are sent to said agents and salesmen from the principal place of business of this defendant; and defendant admits that it does business in the city and county of San Francisco as it does in other cities and towns, and that it employs in said city and county of San Francisco an agent to supervise the selling of sewing-machines; but avers that said agent is a subordinate employee of this defendant, and acts for this defendant at all times under instructions and directions from superior officers of this defendant at defendant's principal place of business. This defendant therefore

avers that it is entitled to be sued, if at all, in said District of New Jersey, and that this Court has no jurisdiction over this defendant.

Further answering defendant denies that the plaintiff is or ever was the original and first and sole or any inventor of the alleged improvements, or any thereof, in treadles for sewing-machines, mentioned in said declaration, and described in the letters patent mentioned in said declaration. Defendant denies that the said alleged improvements were at the time of the alleged invention thereof, or are now, new and useful or new or useful. Defendant further denies that the said alleged improvements in treadles for sewing-machines or any thereof now are or ever were an invention within the meaning of the patent law. On the contrary, defendant avers that the first conception or origination of said so-called improvement or improvements involved no exercise whatever of the inventive faculty, and that the first conception or origination thereof required nothing more than the usual knowledge of an ordinarily skilled mechanic.

Further answering defendant denies that the said alleged invention or improvement or improvements, or any thereof, was not or were not known or used by others in this country before the alleged invention by the plaintiff, and denies that at the time of plaintiff's application for a patent therefor the said alleged invention or improvement or improvements had not been in public use for more than two years. Defendant denies that said alleged invention or improvement had not been abandoned by the plaintiff prior to his application for a patent

therefor. On the contrary, defendant avers that said plaintiff was not the first or original or any inventor or discoverer of the alleged invention or improvement, or inventions or improvements, set forth in or intended to be claimed in said letters patent, but that the said alleged inventions or improvements were, and each of them was, substantially shown and described in the following described letters patent and printed publications prior to the alleged invention thereof by the said plaintiff, to-wit:

United States letters patent No. 106,242, bearing date August 9, 1870, and granted to Charles H. Wilcox, for a "sewing-machine table."

United States letters patent No. 148,759, bearing date March 17, 1874, and granted to John Reynolds and George Jacobie, for a "treadle for sewing-machines."

United States letters patent No. 230,251, bearing date July 20, 1880, and granted to John E. Donovan, for a "sewing-machine treadle."

United States letters patent No. 243,529, bearing date June 28, 1881, and granted to John E. Donovan, for a "sewing-machine table, frame, and treadle.."

United States letters patent No. 256,563, bearing date April 18, 1882, and granted to George W. Gregory, for "treadle support for sewing-machines."

United States letters patent No. 253,212, bearing date February 7, 1882, and granted to John D. Lawlor, for an "improvement in treadles for sewing-machines."

British letters patent No. 2,232, bearing date June 27, 1874, and granted by the government of Great Britain to

Jules Bourdin, for "improvement in means for transmitting motive power to sewing-machines."

British letters patent No. 2,653, bearing date August 7, 1873, and granted by the government of Great Britain to Josiah Turner for an "improvement in sewing-machines."

Also in the "Sewing-Machine Advance," a newspaper published in the city of Chicago, State of Illinois, by Walter Scates, in the issue or number of said newspaper dated June 15, 1881, on page 105 of said issue or number, in a sewing-machine advertisement by George P. Bent, in the middle of said page.

Also in a printed circular published and publicly distributed in the city of Chicago, State of Illinois, and elsewhere, in the years 1880, 1881, and 1882, by George P. Bent.

Further answering defendant avers that it will prove upon the trial of this case that the alleged invention, improvement, and things described and claimed or intended to be described and claimed in plaintiff's said letters patent were, and each of them was, long prior to the alleged invention thereof by said plaintiff, known to and used by the following named persons during the years from 1862 to 1882, inclusive, at the following named places, to-wit:

At Cleveland, Ohio, by H. C. Smith, who then resided and who now resides at Cleveland, Ohio.

At Cincinnati, Ohio, by John E. Donovan, J. Skardon, and J. F. Elliott, who then resided and who now reside at Cincinnati, Ohio.

At Cincinnati, Ohio, by Wm. M. Burdge, who then resided at Cincinnati, Ohio, and who is now deceased.

At Cincinnati, Ohio, by Mrs. Wm. M. Burdge, who then resided and who now resides at Cincinnati, Ohio.

At Hartford, Connecticut, by George A. Fairfield, who then resided and who now resides at Hartford, Connecticut.

At Westfield, Massachusetts, by Albert L. Dewey, Richard E. Morgan, and Helen L. Dewey, who then resided and who now reside at Westfield, Massachusetts.

At Mount Sterling, Kentucky, by Philip L. Reese, who then resided and who now resides at Mount Sterling, Kentucky.

At Charlestown, Massachusetts, by Eben W. Keyes, who then resided and who now resides at Charlestown, Massachusetts.

At Chicago, Illinois, and in New York City, New York, by James Bolton, who then resided and who now resides at Chicago, Illinois.

At New York City, New York, by Lebbeus B. Miller, who then resided and who now resides at Elizabethport, New Jersey.

At Chicago, Illinois, and Elizabeth, New Jersey, by Philip Diehl, who then resided and who now resides at Elizabethport, New Jersey.

At Cincinnati Ohio, by Samuel C. Tatum, who then resided at Cincinnati, Ohio, and who is now deceased.

Also by George P. Bent, in the years 1880, 1881, and 1882, at the city of Chicago, State of Illinois, and also at the city of Kansas City, State of Missouri. Said George

P. Bent then resided and now resides in said city of Chicago, State of Illinois.

Also by Susan Dilworth, in the years 1880, 1881, and 1882, at the city of Chicago, State of Illinois. Said Susan Dilworth then resided and now resides in said city of Chicago, State of Illinois.

Also by William H. Matchett, in the years 1880, 1881, and 1882, at the city of Chicago, State of Illinois, and at the city of Kansas City, State of Missouri. Said William H. Matchett then resided and now resides in said city of Chicago, State of Illinois.

Also by Walter Scates, in the years 1880, 1881, and 1882, at the city of Chicago, State of Illinois. Said Walter Scates then resided and now resides in said city of Chicago, State of Illinois.

Also by Frank B. Davis, in the years 1880, 1881, and 1882, at the city of Chicago, State of Illinois. Said Frank B. Davis then resided and now resides at said city of Chicago, State of Illinois.

Also by William Walmsley, in the years 1880, 1881, and 1882, at the city of Chicago, State of Illinois. Said William Walmsley then resided in La Grange, county of Cook, State of Illinois, and now resides in said city of Chicago, State of Illinois.

Also by Thomas B. Jeffery, during the years from 1862 to 1882, both inclusive, at the city of Chicago, in the State of Illinois, and at the city of New York, in the State of New York. Said Thomas B. Jeffery then resided and now resides at said city of Chicago, State of Illinois.

Further answering as to the allegations in plaintiff's

declaration contained regarding plaintiff's application for his said letters patent, and regarding the issuance to plaintiff of said letters patent, and regarding the proceedings had and taken prior to the issuance thereof, and regarding the ownership of said letters patent, and regarding the use by plaintiff of his said alleged invention, the defendant avers that it has no information concerning the facts alleged with regard to said matters, and therefore denies that on the 25th day of May, 1882, or at any other time, or at all, the plaintiff filed his application in the United States patent office for a patent for said alleged invention or improvement, and denies that on the 30th day of January, 1883, or at any other time, or at all, letters patent for said or any invention were issued and delivered or issued or delivered to said plaintiff, and denies that said or any letters patent granted to the said plaintiff, his heirs and assigns, or to any of them, for the term of seventeen years, or at all, any exclusive or other right or liberty to make or to use or to vend the said alleged invention or improvement throughout the United States and territories thereof. Defendant further denies that said letters patent were issued in due form of law, and denies that prior to the issuance of said letters patent all proceedings were duly had and taken that were required by law to be had or taken prior to the issuance of letters patent for new and useful inventions.

Further answering defendant denies that the plaintiff is now or ever was the sole and exclusive, or sole or exclusive, owner of the so-called invention set forth and

claimed in and by said letters patent mentioned in said declaration, and denies that any right or privilege whatever was granted and secured, or granted or secured, by the said letters patent.

Further answering defendant denies that the plaintiff has made, used, and sold, or made or used or sold; the device alleged to have been patented by him, and denies that the plaintiff has practiced his said alleged invention, and denies that the plaintiff has until the alleged infringement complained of maintained possession of the said alleged invention by virtue of his said letters patent or otherwise, and denies that the plaintiff has never acquiesced in any invasion or infringement of his said alleged rights.

Further answering defendant denies that the defendant, either in violation of plaintiff's alleged rights or disregarding the same, or contriving to injure or to damage the plaintiff, or otherwise or at all, either in the State of California and Northern District thereof, or in any other State or in any territory of the United States, or anywhere else, has since the 30th day of January, 1883, or at any other time, wrongfully or otherwise made or used or sold sewing-machines or any sewing-machine containing and embracing the said alleged invention or improvement described and claimed in and by plaintiff's said letters patent. Defendant further denies that any sewing-machines which defendant has made or used or sold were or are, and denies that any of them ever was or is, an infringement of said letters patent numbered 271,426, and denies that they were, or that any of them was,

made according to the specifications of said last-mentioned letters patent, or contrary to the law and statutes of the United States.

Further answering defendant denies that the plaintiff has ever been in any manner injured and damaged or injured or damaged on account of any act or acts of this defendant, and denies that by reason of any act or acts of this defendant the plaintiff has been deprived of large or any royalties, or of large or any license fees, or of large or any gains, or of large or any profits, which the plaintiff would otherwise have derived from the practice of his alleged invention, and denies that the plaintiff has sustained actual or any damages by reason of any act or acts of the defendant, either in the sum of two hundred and fifty thousand dollars (\$250,000), or in any other sum whatever, or at all.

Further answering defendant avers that the sewing-machine treadles which this defendant has manufactured and sold, and on account of the manufacture and sale of which this action has been commenced against the defendant, were all constructed under and according to the specifications and claims of certain letters patent of the United States No. 306,469, bearing date October 14, 1884, and issued to this defendant as assignee of one Philip Diehl; and defendant further avers that ever since the issuance of said last-mentioned letters patent this defendant has had the right to make and sell sewing-machines and sewing-machine treadles constructed according to the specifications and claims of said last-mentioned letters patent.

Defendant further avers that the state of the art relating to the manufacture of sewing-machines and sewing-machine treadles, at the time of plaintiff's alleged invention and improvement in said treadles, as disclosed by the various letters patent hereinbefore cited, and by the testimony of the parties whose names are hereinbefore especially noticed and set forth, was such that plaintiff's said alleged invention or improvement, if any existed, was extremely narrow and trivial in its nature, and that the claims of his said patent were not and are not, and none of them has been or is, infringed by the manufacture or sale of treadles constructed according to the description contained in said letters patent No. 306,469, issued as aforesaid to this defendant, as assignee of said Philip Diehl.

Defendant further avers that when said plaintiff made his original application to the United States patent office for his said patent, he represented to said patent office in the specification which accompanied his said application that his invention consisted of a treadle, having a bar with V-shaped ends, and resting in sockets constructed in the brace of the machine, and further represented to said patent office that said V-shaped treadle bar in the brace of the machine constituted the improvement or invention which he claimed. Defendant further avers that the specific elements and details of construction in combination, which are shown and described in the claims of plaintiff's said patent as they now appear therein, were not included in any claim or claims which accompanied plaintiff's said original application for said patent. De-

fendant further avers that plaintiff's said original application was rejected by said patent office, and that said patent office at the time of the rejection of said original application notified said plaintiff that his alleged invention was exhibited in United States letters patent No. 256,563, granted on April 18, 1882, to G. W. Gregory.

Defendant further avers that upon the rejection of plaintiff's said original application as aforesaid, the plaintiff filed in said patent office a new and first amended specification, and in his said new and first amended specification represented to said patent office and claimed that his invention consisted of the brace of a machine, having sockets or bearings for a treadle bar, with mufflers at the end of the treadle bar, in combination with the treadle bar itself. Defendant further avers that the specific elements and details of construction in combination which are described and claimed in the claims of plaintiff's said patent, as they now appear therein, were not included in plaintiff's said first amended specification, nor in any claim or claims which accompanied plaintiff's said first amended specification. Defendant further avers that plaintiff's said application, when accompanied by said first amended specification, was again rejected by said patent office, and that said patent office, at the time of said last-mentioned rejection, notified said plaintiff that his alleged invention, as described in his said first amended specification, was met by United States letters patent No. 243,529, granted on June 28, 1880, to John E. Donovan.

Defendant further avers that upon the said last-men-

tioned rejection of his said application, the plaintiff filed in said patent office a new and second amended specification, and in his said second amended specification represented to said patent office and claimed that his invention consisted in the specific elements and details of construction in combination, as the same now appear and are described and claimed in the claims of plaintiff's said patent.

Defendant further avers that it was only by thus limiting his claims to the precise combination of specifically mentioned elements and details of construction of which the claims of his said patent are now composed, that plaintiff was able to obtain the issuance of said patent at all, and that if he had not so limited his claim to invention in said patent office, no patent would have been granted to him at all.

Defendant further avers that by the aforesaid amendments of his specification, and by so, as aforesaid, limiting his claim to invention, the plaintiff entirely abandoned, in said patent office, any and all claims to a treadle hung or swinging generally in the brace of a machine, and is now estopped from asserting any claim to a treadle hung or swinging in the brace of a machine, excepting in the precise combination and precise manner, and in combination with the precise elements and exact details of construction shown and claimed in the claims of his said letters patent, as the same now appear.

Further answering defendant avers that heretofore, to-wit, on or about the thirty-first day of May, 1893, the plaintiff herein commenced an action in this court

against this defendant, and against one Willis B. Fry, as the managing agent of this defendant in the State and Northern District of California. That said action was numbered 11,808, and was brought on account of alleged acts of infringement by this defendant and the said Willis B. Fry of the identical letters patent sued upon in this action. That the acts of alleged infringement which were charged in the declaration in said action No. 11,808 to have been committed by this defendant and the said Willis B. Fry were identically the same acts which are in the declaration herein alleged to have constituted infringements of the letters patent herein sued upon, and which are alleged in the declaration herein to have been committed by this defendant. That in the course of its business of making and selling sewing-machines this defendant has made and sold large numbers of sewing-machines containing treadles and treadle mechanism constructed under and according to the specification and claims of those certain United States letters patent numbered 306,469, granted on October 14, 1884, to this defendant as assignee of Philip Diehl. That the making and selling of sewing-machine treadles constructed according to said last-mentioned letters patent constituted all the acts of alleged infringement which were charged in the declaration in said action No. 11,808 to have been committed by this defendant or by the said Willis B. Fry. That in said action No. 11,808 this defendant made objection to the maintenance of said action against itself, upon the ground that this defendant was a resident of the District of New Jersey, and not a

resident of the Northern District of California, and therefore that this Court had no jurisdiction over this defendant; that said objection was sustained by this Court, and the said action No. 11,808 was thereupon dismissed as to this defendant, and the said action No. 11,808 was thereafter proceeded with against the said Willis B. Fry only. That the said Willis B. Fry then was the general manager of the business of this defendant in the Northern District of California and elsewhere on the Pacific Coast in the business of selling sewing-machines, and that the sole and only acts of infringement which were in said action No. 11,808 charged against the said Willis B. Fry consisted in the selling of sewing-machines which contained treadles and treadle mechanism constructed according to the specification and claims of said Diehl letters patent No. 306,469 by the said Willis B. Fry, as this defendant's agent and manager. That upon the trial of said action No. 11,808 the plaintiff was permitted to prove, and did prove, the commission by this defendant of the acts which were charged in the declaration in said action to be infringements of plaintiff's patent, and was permitted to prove, and did prove, that this defendant had made and sold large numbers of sewing-machines containing the treadles and treadle mechanism described in said Diehl letters patent No. 306,469. That in and during the trial of said action No. 11,808 the treadles and treadle mechanism which had been made by this defendant, and which had been sold by said Willis B. Fry, as the agent for this defendant, and which in said action were charged to infringe plaintiff's let-

ters patent, were very carefully and very fully compared with the treadle and treadle mechanism described in the plaintiff's patent, and alleged by the plaintiff to have been his invention; and this Court thereupon, when the taking of testimony in said action No. 11,808 was concluded, decided that the making and selling of treadles and treadle mechanism constructed according to the specification and claims of the said Diehl letters patent No. 306,469 did not constitute any infringement of the plaintiff's patent, and this Court thereupon ordered judgment to be entered in said action No. 11,808 in favor of the said defendant, Willis B. Fry, and against the said plaintiff, and judgment was accordingly so entered on the 12th day of April, 1895, and no appeal has ever been taken therefrom, and the same has never been in any manner modified nor set aside, but is now in full force and effect.

This defendant further avers that the infringement and infringements of plaintiff's patent which are charged in the declaration herein to have been committed by this defendant consist entirely and solely of the making and selling of treadles and treadle mechanism constructed according to the specification and claims of the said Diehl letters patent No. 306,469, and that the plaintiff does not in this action charge this defendant with having infringed his said letters patent in any other manner than by making and selling treadles and treadle mechanism constructed according to the specification and claims of the said Diehl letters patent No. 306,469.

This defendant therefore avers that as the treadles and

treadle mechanism which were made by this defendant, and which were sold by this defendant by and through its said agent, Willis B. Fry, were in said action No. 11,808 adjudged not to infringe the plaintiff's alleged invention, and not to infringe the plaintiff's letters patent herein sued upon, the judgment in said action No. 11,808 is a bar to this action, and that the plaintiff ought not to be allowed to further prosecute this action against this defendant.

Further answering defendant avers that the cause of action set forth in the declaration on file herein is, and at the time of the commencement of this action was barred by section 339, and subdivision one thereof, of the Code of Civil Procedure of the State of California.

Further answering defendant avers that search by the attorneys for this defendant is now being made amongst printed publications for further expositions of the plaintiff's alleged invention, in the precise form in which the same is shown in his said letters patent, but that said attorneys have not been able to complete said search at the time of the preparation of this answer, and that defendant will hereafter, if it be so advised, ask permission of this Court to amend its answer so as to incorporate therein the results of said search.

Wherefore, having fully answered plaintiff's declaration, the defendant demands that it be hence dismissed with its costs in this action incurred.

WHEATON, KALLOCH & KIERCE,
CHAS. K. OFFIELD,
Attorneys for Defendant.

Service of the above and foregoing answer and receipt of a copy thereof on this 18th day of March, 1897, is hereby admitted.

JNO. H. MILLER,
Attorney for Plaintiff.

[Endorsed]: Filed March 18th, 1897. W. J. Costigan,
Clerk.

*In the Circuit Court of the United States for the Northern
District of California.*

HERMAN CRAMER,

Plaintiff,

vs.

SINGER MANUFACTURING COM-
PANY.

Defendant.

} No. 12,259.

Demurrer to Defendant's Answer.

Now comes Herman Cramer, the plaintiff in this action, by John H. Miller, his attorney, and demurs to all that separate and special defense set up in the defendant's answer between lines 15, on page 11, and line 28, on page 13, and for grounds of demurrer specify that the same does not state facts sufficient to constitute a defense to the action.

And the plaintiff also demurs to that separate and special defense set up in defendant's answer and included between lines 27, on page 13, and line 10, on page 17, and for grounds of demurrer specify that the same does

not state facts sufficient to constitute a defense to the action.

Wherefore, plaintiff prays judgment that the said two special defenses do not, nor does either of them, constitute any defense to the plaintiff's cause of action.

JOHN H. MILLER,
Attorney for Plaintiff.

Affidavit and Certificate of Counsel.

State of California,
City and County of San Francisco. } ss.

John H. Miller, being duly sworn, deposes and says that he is the attorney for the plaintiff in the above-entitled action; that in his judgment the foregoing demurrer is well taken in point of law; that the same is not interposed for the purpose of delay; that the said Herman Cramer is absent from the city and county of San Francisco, and for that reason counsel makes this affidavit.

JOHN H. MILLER.

Subscribed and sworn to before me this 29th day of March, 1897.

[Seal]

J. N. TURNER,

Notary Public, in and for the City and County of San Francisco, State of California.

Receipt of the within demurrer admitted this 29th day of March, A. D. 1897.

WHEATON, KALLOCH & KIERCE,
Attys. for Deft.

[Endorsed]: Filed March 29th, 1897. W. J. Costigan,
Clerk. By W. B. Beaizley, Deputy.

At a stated term, to-wit, the March term, A. D. 1897, of
the Circuit Court of the United States of America, for
the Ninth Judicial Circuit, in and for the Northern
District of California, held at the courtroom in the
city and county of San Francisco, on Monday, the
19th day of April in the year of our Lord one thou-
sand eight hundred and ninety-seven.

Present: The Honorable WILLIAM W. MORROW,
Circuit Judge.

HERMAN CRAMER

vs.

SINGER MANUFACTURING COM-
PANY.

} No. 12,259.

Order Sustaining Demurrer to Answer.

Upon motion of John H. Miller, Esq., counsel for plain-
tiff, ordered the order submitting motion to strike out
parts defendant's answer and demurrer to answer herein
vacated and set aside, and said motion to strike out with-
drawn. Further ordered, demurrer to answer herein be
sustained, pursuant to statement in defendant's brief on
said demurrer to answer filed herein.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

HERMAN CRAMER,

Plaintiff,

vs.

SINGER MANUFACTURING COM-
PANY (a Corporation),

Defendant.

No. 12,259

Amended Answer.

Comes now the defendant above named, the Singer Manufacturing Company, by its attorneys, Messrs. Wheaton, Kalloch & Kierce and Chas. K. Offield, and by leave of the Court first had and obtained files this its amended answer, and without waiving its objection heretofore taken to the jurisdiction of this Court over it, but hereby expressly continuing and maintaining and now renewing its objection to the taking of jurisdiction over the defendant in this case by this Court and hereby expressly reserving its exception to the taking of jurisdiction over it by this Court denies generally and specifically each and every allegation contained in plaintiff's declaration on file herein and says that the defendant is not guilty of the grievances in said declaration charged against it nor of any of them nor of any part thereof, and of this the defendant puts itself upon the country.

Further answering this defendant admits that it is, and at all times in said declaration mentioned was, a corpora-

tion organized and existing under the laws of the State of New Jersey, and avers that its factories and manufacturing works are situated in the said State of New Jersey, and in the District of New Jersey, and that its place of residence is in the said State and District of New Jersey, and that it has no factories, manufacturing works, nor plant in the State of California or in the Northern District of California, and that its principal place of business is not in said State or Northern District of California, and that its place of residence is not in said State or Northern District of California. That in the ordinary conduct of its business the defendant is engaged in selling throughout all the States and Territories of the United States sewing-machines made at its said factories in the State of New Jersey, and that it employs agents and salesmen in a very large number of cities and towns in the United States and territories thereof, whose sole business it is to receive and distribute and sell sewing-machines consigned to them from the defendant's said factories in New Jersey, according to directions and instructions which are sent to said agents and salesmen from the principal place of business of this defendant; and defendant admits that it does business in the city and county of San Francisco as it does in other cities and towns, and that it employs in said city and county of San Francisco an agent to supervise the selling of sewing-machines; but avers that said agent is a subordinate employee of this defendant, and acts for this defendant at all times under instructions and directions from superior officers of this defendant at defendant's principal place of business. This defendant therefore avers that it is en-

titled to be sued, if at all, in said District of New Jersey, and that this Court has no jurisdiction over this defendant.

Further answering defendant denies that the plaintiff is or ever was the original and first and sole or any inventor of the alleged improvements, or any thereof, in treadles for sewing-machines mentioned in said declaration and described in the letters patent mentioned in said declaration. Defendant denies that the said alleged improvements were at the time of the alleged invention thereof, or are now, new and useful or new or useful. Defendant further denies that the said alleged improvements in treadles for sewing-machines, or any thereof, now are or ever were an invention within the meaning of the patent law. On the contrary, defendant avers that the first conception or origination of said so-called improvement or improvements involved no exercise whatever of the inventive faculty, and that the first conception or origination thereof required nothing more than the usual knowledge of an ordinarily skilled mechanic.

Further answering defendant denies that the said alleged invention or improvement or improvements, or any thereof, was not or were not known or used by others in this country before the alleged invention by the plaintiff, and denies that at the time of plaintiff's application for a patent therefor the said alleged invention or improvement or improvements had not been in public use for more than two years. Defendant denies that said alleged invention or improvement had not been abandoned by the plaintiff prior to his application for a patent therefor.

On the contrary, defendant avers that said plaintiff was not the first or original or any inventor or discoverer of the alleged invention or improvement or inventions or improvements set forth in or intended to be claimed in said letters patent, but that the said alleged inventions or improvements were, and each of them was, substantially shown and described in the following described letters patent and printed publications prior to the alleged invention thereof by the said plaintiff, to-wit:

United States letters patent No. 106,242, bearing date August 9, 1870, and granted to Charles H. Wilcox, for a "sewing-machine table."

United States letters patent No. 148,759, bearing date March 17, 1874, and granted to John Reynolds and George Jacobie, for a "treadle for sewing-machines."

United States letters patent No. 230,251, bearing date July 20, 1880, and granted to John E. Donovan, for a "sewing-machine treadle."

United States letters patent No. 243,529, bearing date June 28, 1881, and granted to John E. Donovan, for a "sewing-machine table, frame, and treadle."

United States letters patent No. 256,563, bearing date April 18, 1882, and granted to George W. Gregory, for "treadle support for sewing-machines."

United States letters patent No. 253,212, bearing date February 7, 1882, and granted to John D. Lawlor, for an "improvement in treadles for sewing-machines."

British letters patent No. 2,232, bearing date June 27, 1874, and granted by the government of Great Britain to Jules Bourdin, for "improvement in means for transmitting motive power to sewing-machines."

British letters patent No. 2,653, bearing date August 7, 1873, and granted by the government of Great Britain to Josiah Turner for an "improvement in sewing-machines."

Also in the "Sewing-Machine Advance," a newspaper published in the city of Chicago, State of Illinois, by Walter Scates, in the issue or number of said newspaper dated June 15, 1881, on page 105 of said issue or number, in a sewing-machine advertisement by George P. Bent, in the middle of said page.

Also in a printed circular published and publicly distributed in the city of Chicago, State of Illinois, and elsewhere, in the years 1880, 1881 and 1882, by George P. Bent.

Further answering defendant avers that it will prove upon the trial of this case that the alleged invention, improvement and things described and claimed or intended to be described and claimed, in plaintiff's said letters patent were, and each of them was, long prior to the alleged invention thereof by said plaintiff, known to and used by the following named persons during the years from 1862 to 1882, inclusive, at the following named places, to-wit:

At Cleveland, Ohio, by H. C. Smith, who then resided and who now resides at Cleveland, Ohio.

At Cincinnati, Ohio, by John E. Donovan, J. Skardon, and J. F. Elliott, who then resided and who now reside at Cincinnati, Ohio.

At Cincinnati, Ohio, by Wm. M. Burdge, who then resided at Cincinnati, Ohio, and who is now deceased.

At Cincinnati, Ohio, by Mrs. Wm. M. Burdge, who then resided and who now resides at Cincinnati, Ohio.

At Hartford, Connecticut, by George A. Fairfield, who then resided and who now resides at Hartford, Connecticut.

At Westfield, Massachusetts, by Albert L. Dewey, Richard E. Morgan, and Helen L. Dewey, who then resided and who now reside at Westfield, Massachusetts.

At Mount Sterling, Kentucky, by Philip L. Reese, who then resided and who now resides at Mount Sterling, Kentucky.

At Charlestown, Massachusetts, by Eben W. Keyes, who then resided and who now resides at Charlestown, Massachusetts.

At Chicago, Illinois, and in New York City, New York, by James Bolton, who then resided and who now resides at Chicago, Illinois.

At New York City, New York, by Lebbeus B. Miller, who then resided and who now resides at Elizabethport, New Jersey.

At Chicago, Illinois, and Elizabeth, New Jersey, by Philip Diehl, who then resided and who now resides at Elizabethport, New Jersey.

At Cincinnati, Ohio, by Samuel C. Tatum, who then resided at Cincinnati, Ohio, and who is now deceased.

Also by George P. Bent, in the years 1880, 1881, and 1882, at the city of Chicago, State of Illinois, and also at the city of Kansas City, State of Missouri. Said George P. Bent then resided and now resides in said city of Chicago, State of Illinois.

Also by Susan Dilworth, in the years 1880, 1881, and 1882, at the city of Chicago, State of Illinois. Said Susan

Dilworth then resided and now resides in said city of Chicago, State of Illinois.

Also by William H. Matchett, in the years 1880, 1881, and 1882, at the city of Chicago, State of Illinois, and at the city of Kansas City, State of Missouri. Said William H. Matchett then resided and now resides in said city of Chicago, State of Illinois.

Also by Walter Scates, in the years 1880, 1881, and 1882, at the city of Chicago, State of Illinois. Said Walter Scates then resided and now resides in said city of Chicago, State of Illinois.

Also by Frank B. Davis, in the years 1880, 1881 and 1882, at the city of Chicago, State of Illinois. Said Frank B. Davis then resided and now resides at said city of Chicago, State of Illinois.

Also by William Walmsley, in the years 1880, 1881, and 1882, at the city of Chicago, State of Illinois. Said William Walmsley then resided in La Grange, county of Cook, State of Illinois, and now resides in said city of Chicago, State of Illinois.

Also by Thomas B. Jeffery, during the years from 1862 to 1882, both inclusive, at the city of Chicago, in the State of Illinois, and at the city of New York, in the State of New York. Said Thomas B. Jeffery then resided and now resides at said city of Chicago, State of Illinois.

Further answering as to the allegations in plaintiff's declaration contained regarding plaintiff's application for his said letters patent, and regarding the issuance to plaintiff of said letters patent, and regarding the proceedings had and taken prior to the issuance thereof, and

regarding the ownership of said letters patent, and regarding the use by plaintiff of his said alleged invention, the defendant avers that it has no information concerning the facts alleged with regard to said matters, and therefore denies that on the 25th day of May, 1882, or at any other time, or at all, the plaintiff filed his application in the United States patent office for a patent for said alleged invention or improvement, and denies that on the 30th day of January, 1883, or at any other time, or at all, letters patent for said or any invention were issued and delivered or issued or delivered to said plaintiff, and denies that said or any letters patent granted to the said plaintiff, his heirs and assigns, or to any of them, for the term of seventeen years, or at all, any exclusive or other right or liberty to make, or to use, or to vend the said alleged invention or improvement throughout the United States and territories thereof. Defendant further denies that said letters patent were issued in due form of law, and denies that prior to the issuance of said letters patent all proceedings were duly had and taken that were required by law to be had or taken prior to the issuance of letters patent for new and useful inventions.

Further answering defendant denies that the plaintiff is now or ever was the sole and exclusive, or sole or exclusive owner of the so-called invention set forth and claimed in and by said letters patent mentioned in said declaration, and denies that any right or privilege whatever was granted and secured, or granted or secured, by the said letters patent.

Further answering defendant denies that the plaintiff

has made, used, and sold, or made or used or sold, the device alleged to have been patented by him, and denies that the plaintiff has practiced his said alleged invention, and denies that the plaintiff has until the alleged infringement complained of maintained possession of the said alleged invention by virtue of his said letters patent or otherwise, and denies that the plaintiff has never acquiesced in any invasion or infringement of his said alleged rights.

Further answering defendant denies that the defendant, either in violation of plaintiff's alleged rights or disregarding the same, or contriving to injure or to damage the plaintiff, or otherwise, or at all, either in the State of California and Northern District thereof, or in any other State or in any territory of the United States, or anywhere else, has since the 30th day of January, 1883, or at any other time, wrongfully or otherwise made or used or sold sewing-machines or any sewing-machine containing and embracing the said alleged invention or improvement described and claimed in and by plaintiff's said letters patent. Defendant further denies that any sewing-machines which defendant has made or used or sold were or are, and denies that any of them ever was or is, an infringement of said letters patent numbered 271,426, and denies that they were or that any of them was made according to the specifications of said last mentioned letters patent, or contrary to the law and statutes of the United States.

Further answering defendant denies that the plaintiff has ever been in any manner injured and damaged, or in-

jured or damaged on account of any act or acts of this defendant, and denies that by reason of any act or acts of this defendant the plaintiff has been deprived of large or any royalties, or of large or any license fees, or of large or any gains, or of large or any profits, which the plaintiff would otherwise have derived from the practice of his alleged invention, and denies that the plaintiff has sustained actual or any damages by reason of any act or acts of the defendant, either in the sum of two hundred and fifty thousand dollars (\$250,000), or in any other sum whatever, or at all.

Further answering defendant avers that the sewing-machine treadles which this defendant has manufactured and sold, and on account of the manufacture and sale of which this action has been commenced against the defendant were all constructed under and according to the specifications and claims of certain letters patent of the United States, No. 306,469, bearing date October 14, 1884, and issued to this defendant, as assignee of one Philip Diehl; and defendant further avers that ever since the issuance of said last mentioned letters patent this defendant has had the right to make and sell sewing-machines and sewing-machine treadles constructed according to the specifications and claims of said last-mentioned letters patent.

Defendant further avers that the state of the art relating to the manufacture of sewing-machines and sewing-machine treadles at the time of plaintiff's alleged invention and improvement in said treadles, as disclosed by the various letters patent hereinbefore cited, and by the

testimony of the parties whose names are hereinbefore especially noticed and set forth, was such that plaintiff's said alleged invention or improvement, if any existed, was extremely narrow and trivial in its nature, and that the claims of his said patent were not and are not, and none of them has been or is, infringed by the manufacture or sale of treadles constructed according to the description contained in said letters patent No. 306,469, issued as aforesaid to this defendant, as assignee of said Philip Diehl.

Defendant further avers that when said plaintiff made his original application to the United States patent office for his said patent, he represented to said patent office in the specification which accompanied his said application that his invention consisted of a treadle having a bar with V-shaped ends, and resting in sockets constructed in the brace of the machine, and further represented to said patent office that said V-shaped treadle bar in the brace of the machine constituted the improvement or invention which he claimed. Defendant further avers that the specific elements and details of construction in combination, which are shown and described in the claims of plaintiff's said patent as they now appear therein, were not included in any claim or claims which accompanied plaintiff's said original application for said patent. Defendant further avers that plaintiff's said original application was rejected by said patent office, and that said patent office at the time of the rejection of said original application notified said plaintiff that his alleged invention was exhibited in United States letters

patent No. 256,563, granted on April 18, 1882, to G. W. Gregory.

Defendant further avers that upon the rejection of plaintiff's said original application as aforesaid, the plaintiff filed in said patent office a new and first amended specification, and in his said new and first amended specification represented to said patent office and claimed that his invention consisted of the brace of a machine, having sockets or bearings for a treadle bar, with mufflers at the end of the treadle bar, in combination with the treadle bar itself. Defendant further avers that the specific elements and details of construction in combination which are described and claimed in the claims of plaintiff's said patent, as they now appear therein, were not included in plaintiff's said first amended specification, nor in any claim or claims which accompanied plaintiff's said first amended specification. Defendant further avers that plaintiff's said application, when accompanied by said first amended specification, was again rejected by said patent office, and that said patent office, at the time of said last-mentioned rejection, notified said plaintiff that his alleged invention, as described in his said first amended specification, was met by United States letters patent No. 243,529, granted on June 28, 1880, to John E. Donovan.

Defendant further avers that upon the said last-mentioned rejection of his said application the plaintiff filed in said patent office a new and second amended specification, and in his said second amended specification represented to said patent office and claimed that his inven-

tion consisted in the specific elements and details of construction in combination, as the same now appear and are described and claimed in the claims of plaintiff's said patent.

Defendant further avers that it was only by thus limiting his claims to the precise combination of specifically mentioned elements and details of construction of which the claims of his said patent are now composed, that plaintiff was able to obtain the issuance of said patent at all, and that if he had not so limited his claim to invention in said patent office no patent would have been granted to him at all.

Defendant further avers that by the aforesaid amendments of his specification, and by so, as aforesaid, limiting his claim to invention, the plaintiff entirely abandoned, in said patent office, any and all claims to a treadle hung or swinging generally in the brace of a machine, and is now estopped from asserting any claim to a treadle hung or swinging in the brace of a machine, excepting in the precise combination and precise manner, and in combination with the precise elements and exact details of construction shown and claimed in the claims of his said letters patent, as the same now appear.

Further answering the defendant avers that owing to the restrictions and limitations imposed in the patent office upon the plaintiff's alleged invention, as hereinbefore set forth, and as shown in the file wrapper and contents of plaintiff's said patent, and on account of the plaintiff's acquiescence in said restrictions and limitations, the sewing-machine treadles which this defend-

aut has made and sold never have in any instance infringed, and do not now infringe the plaintiff's said patent.

Further answering defendant avers that heretofore, to-wit, on or about the thirty-first day of May, 1893, the plaintiff herein commenced an action in this court against this defendant, and against one Willis B. Fry, as the managing agent of this defendant in the State and Northern District of California. That said action was numbered 11,808, and was brought on account of alleged acts of infringement by this defendant and the said Willis B. Fry of the identical letters patent sued upon in this action. That the acts of alleged infringement which were charged in the declaration in said action No. 11,808 to have been committed by this defendant and the said Willis B. Fry were identically the same acts which are in the declaration herein alleged to have constituted infringements of the letters patent herein sued upon, and which are alleged in the declaration herein to have been committed by this defendant. That in the course of its business of making and selling sewing-machines this defendant has made and sold large numbers of sewing-machines containing treadles and treadle mechanism constructed under and according to the specification and claims of those certain United States letters patent numbered 306,469, granted on October 14, 1884, to this defendant, as assignee of Philip Diehl. That the making and selling of sewing-machine treadles constructed according to said last-mentioned letters patent constituted all the acts of alleged infringement which were charged

in the declaration in said action No. 11,808 to have been committed by this defendant or by the said Willis B. Fry. That in said action No. 11,808 this defendant made objection to the maintenance of said action against itself, upon the ground that this defendant was a resident of the District of New Jersey and not a resident of the Northern District of California, and therefore that this Court had no jurisdiction over this defendant; that said objection was sustained by this Court, and the said action No. 11,808 was thereupon dismissed as to this defendant, and the said action No. 11,808 was thereafter proceeded with against the said Willis B. Fry only. That the said Willis B. Fry then was the general manager of the business of this defendant in the Northern District of California and elsewhere on the Pacific Coast in the business of selling sewing-machines, and that the sole and only acts of infringement which were in said action No. 11,808 charged against the said Willis B. Fry consisted in the selling of sewing-machines which contained treadles and treadle mechanism constructed according to the specification and claims of said Diehl letters patent No. 306,469, by the said Willis B. Fry, as this defendant's agent and manager. That upon the trial of said action No. 11,808 the plaintiff was permitted to prove, and did prove, the commission by this defendant of the acts which were charged in the declaration in said action to be infringements of plaintiff's patent, and was permitted to prove, and did prove, that this defendant had made and sold large numbers of sewing-machines containing the treadles and treadle mechanism described in said

Diehl letters patent No. 306,469. That in and during the trial of said action No. 11,808 the treadles and treadle mechanism which had been made by this defendant, and which had been sold by said Willis B. Fry, as the agent for this defendant, and which in said action were charged to infringe plaintiff's letters patent, were very carefully and very fully compared with the treadle and treadle mechanism described in the plaintiff's patent and alleged by the plaintiff to have been his invention; and this Court thereupon, when the taking of testimony in said action No. 11,808 was concluded, decided that the making and selling of treadles and treadle mechanism constructed according to the specification and claims of the said Diehl letters patent No. 306,469 did not constitute any infringement of the plaintiff's patent, and this Court thereupon ordered judgment to be entered in said action No. 11,808 in favor of the said defendant, Willis B. Fry, and against the said plaintiff, and judgment was accordingly so entered on the 12th day of April, 1895, and no appeal has ever been taken therefrom, and the same has never been in any manner modified nor set aside, but is now in full force and effect.

This defendant further avers that in said action No. 11,808 the said Willis B. Fry was made a defendant, because of acts of alleged infringement committed by him in the usual course of his employment by this defendant, and within the scope of his said employment, and not otherwise, and that all the acts which were alleged in the declaration in said action No. 11,808 to constitute infringement of plaintiff's patent were and are identical

with the acts which are in the declaration herein alleged to have been the defendant's acts of infringement. That this defendant, by and through its attorneys, openly assumed control of the defense in said action No. 11,808, and managed said defense at all stages thereof and throughout the trial of said action, and until the judgment therein became final, and defrayed all the expenses of said defense.

This defendant further avers that the infringement and infringements of plaintiff's patent which are charged in the declaration herein to have been committed by this defendant consist entirely and solely of the making and selling of treadles and treadle mechanism constructed according to the specification and claims of the said Diehl letters patent No. 306,469, and that the plaintiff does not in this action charge this defendant with having infringed his said letters patent in any other manner than by making and selling treadles and treadle mechanism constructed according to the specification and claims of the said Diehl letters patent No. 306,469.

This defendant, therefore, avers that as the treadles and treadle mechanism which were made by this defendant, and which were sold by this defendant by and through its said agent, Willis B. Fry, were in said action No. 11,808 adjudged not to infringe the plaintiff's alleged invention, and not to infringe the plaintiff's letters patent herein sued upon, the judgment in said action No. 11,808 is a bar to this action, and that the plaintiff ought not to be allowed to further prosecute this action against this defendant.

Further answering defendant avers that the cause of action set forth in the declaration on file herein is, and at the time of the commencement of this action was, barred by section 339, and subdivision one thereof, of the Code of Civil Procedure of the State of California.

Further answering defendant avers that search by the attorneys for this defendant is now being made amongst printed publications for further expositions of the plaintiff's alleged invention, in the precise form in which the same is shown in his said letters patent, but that said attorneys have not been able to complete said search at the time of the preparation of this amended answer, and that defendant will hereafter, if it be so advised, ask permission of this Court to further amend its answer so as to incorporate therein the results of said search.

Wherefore, having fully answered plaintiff's declaration, the defendant demands that it be hence dismissed with its costs in this action incurred.

WHEATON, KALLOCH & KIERCE, and
CHAS. K. OFFIELD,

Attorneys for Defendant.

Service of the above and foregoing amended answer and receipt of a copy thereof on this 27th day of May, 1897, is hereby admitted.

JNO. H. MILLER,
Attorney for Plaintiff.

[Endorsed]: Filed May 27, 1897. W. J. Costigan,
Clerk. By W. B. Beazley, Deputy Clerk.

*Circuit Court of the United States, for the Northern District
of California.*

HERMAN CRAMER,	Plaintiff,	} No. 12,259.
vs.		
SINGER MANUFACTURING COM-	Defendant.	
PANY,		

Verdict

We, the jury, find in favor of the defendant.

J. G. H. MEYER, Foreman.

[Endorsed]: Filed August 10, 1898. Southard Hoff-
man, Clerk. By W. B. Beazley, Deputy Clerk.

UNITED STATES OF AMERICA.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

HERMAN CRAMER,	Plaintiff,	} No. 12,259.
vs.		
SINGER MANUFACTURING COM-	Defendant.	
PANY (a Corporation),		

Judgment on Verdict.

This cause came on regularly for trial. The said parties appeared by their attorneys. A jury of twelve persons was regularly impaneled and sworn to try said cause. Witnesses on the part of plaintiff and defendant were sworn and examined. After hearing the evidence, arguments of counsel, and instructions of the Court, the jury being instructed by the Court so to do, presented the following verdict: "We, the jury, find in favor of the defendant."

Wherefore, by virtue of the law, and by reason of the premises aforesaid, it is ordered, adjudged, and decreed that said plaintiff take nothing by this action; that said defendant go hereof without day, and that said defendant recover from said plaintiff its costs and disbursements incurred in this action, amounting to the sum of \$56.40.

Entered this 10th day of August, A. D. 1898.

SOUTHARD HOFFMAN, Clerk.

A true copy. Attest:

[Seal] SOUTHARD HOFFMAN, Clerk.

[Endorsed]: Filed August 10, 1898. Southard Hoffman, Clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Northern District of California.

HERMAN CRAMER,

vs.

SINGER MANUFACTURING COM-
PANY,

} No. 12,259.

Certificate to Judgment Roll.

I, Southard Hoffman, Clerk of the Circuit Court of the United States, for the Ninth Judicial Circuit, Northern District of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment roll in the above-entitled action.

Attest my hand and the seal of said Circuit Court, this 10th day of August, 1898.

[Seal]

SOUTHARD HOFFMAN, Clerk.

By W. B. Beazley, Deputy Clerk.

[Endorsed]: Filed August 10th, 1898. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

*In the Circuit Court of the United States, for the Northern
District of California.*

HERMAN CRAMER,

Plaintiff,

vs.

SINGER MANUFACTURING COM-
PANY,

Defendant.

No. 12,259.

Bill of Exceptions.

Be it remembered that the above-entitled case came on regularly for trial of the issues framed by the pleadings on August 5, 1898, before the above-entitled court, J. H. Miller, Esquire, appearing as attorney for the plaintiff, and M. A. Wheaton and C. K. Offield, Esquires, for the defendant. And thereupon, a jury of twelve men was duly and regularly impaneled and sworn to try the case, and the following proceedings had:

Plaintiff's attorney made an opening statement of what he proposed to prove during the trial, and defendant's attorney made an opening statement of what he proposed to show in defense. Plaintiff then introduced in evidence the letters patent sued on No. 271,426, dated January 30, 1882, and granted to Herman Cramer, the plaintiff. The specification and drawings of which letters patent are as follows:

(No Model.)

H. CRAMER.

TREADLE FOR SEWING MACHINES, &c.

No. 271,426.

Patented Jan. 30, 1883.

Fig. 1.

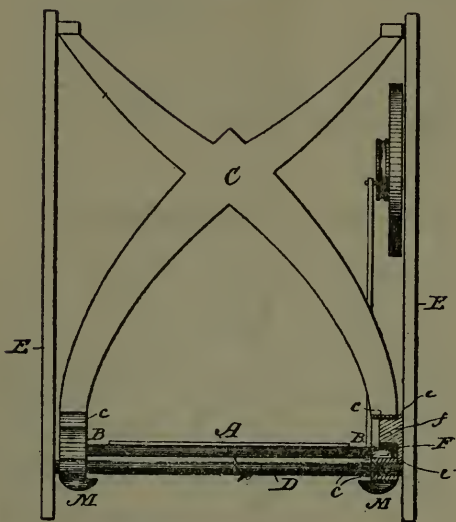
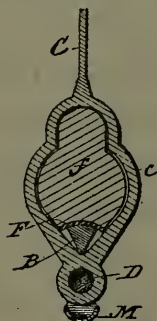


Fig. 2.



WITNESSES:

N. B. Brown

W. L. Stevens.

INVENTOR:

H. Cramer

BY

R. L. Cramer

ATTORNEYS.

UNITED STATES PATENT OFFICE.

Herman Cramer, of Sonora, California.

Treadle for Sewing-Machines, Etc.

Specification Forming Part of Letters Patent No.

271,426, dated January 30, 1883.

Application filed May 25, 1882. (No model.)

To all whom it may concern:

Be it known that I, Herman Cramer, of Sonora, in the county of Tuolumne and State of California, have invented a new and improved sewing-machine treadle; and I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawings, forming part of this specification.

My invention relates to improvements in the bearings of sewing-machine treadles; and it has for its object to provide means, first, to keep the treadle bearings rigidly in line and at a fixed distance apart to avoid friction, and, second, to make its movement in use noiseless.

To this end my invention consists in the construction and combination of parts hereinafter fully described and claimed, reference being had to the accompanying drawings, in which—

Figure 1 is a perspective view of a portion of a sewing-machine, showing my invention. Fig. 2 is a transverse vertical section through one bearing of the treadle.

A represents the treadle, provided with the usual pitman-connection by which to run the sewing-machine wheel.

B represents the two trunnions, cast as a portion of the treadle and extending from its sides into loop-holes in the common cast-iron cross-brace C. These trunnions are sharpened to an edge or corner along their lower sides, and the lower end of the loop-hole is hollowed to an angle more obtuse than the edge of the trunnion, to serve as a bearing for the same and permit the rocking motion common to treadles.

C represents the usual cast-iron double brace connecting the two end legs diagonally in a plane generally vertical. The lower ends of this brace are secured directly to the web of the legs by bolts d, and for convenience and strength I make the two ends of the common cross-bar, D, serve as these bolts. The upper ends of the brace are secured, as usual, either to the web of the legs or to the table of the machine, near the legs.

The treadle and its trunnion bearings are wholly independent of the cross-bar D, except its service, as stated, to hold the brace to the legs. The bearing-holes in the bar, D, serve as these bolts. The upper ends of the brace are formed into long vertical loops to permit the entrance of the treadle.

Pieces of leather, F, or other soft material cover the top and end of each trunnion, to serve as cushions to keep the same close in its bearing, to prevent the noise which would result were the trunnions permitted to bounce and thump endwise, when the treadle is in motion. The leather F is fitted to the curve of the upper side of the trunnion, which is an arc of a cylinder whose center of oscillation is the lower edge of the trunnion. The same leather also interposes between the end of the

trunnion and the adjacent iron. *f* is a block serving as a mere backer, to which the cushion *F* is attached. This block conforms to the back and top side of the cushion and fills the loop-hole in the brace above the trunnion. It also has tangs or projections *e*, resting in suitable recesses in the brace *C*, which are held between the brace and the web of the leg *E*, by which means the block and cushion are held in place.

Below the bearings of the trunnions *B*, I provide cups *M*, attached to the ends of brace *C*, to catch the oil that usually drips from such bearings. By this construction my treadle bearings are rigidly fixed, and in no way liable to get out of line or to require adjustment. The usual noise is prevented and overflowing oil is caught before it can do damage.

I am aware that sewing-machine treadles have before been provided with V-shaped bearings, and I do not claim the same as my invention; but

What I claim, and wish to secure by Letters Patent, is,—

1. The vertical double brace joining the legs of the two ends of a sewing-machine, provided with holes through its lower extremities to serve as bearings in combination with a treadle provided with trunnions fitted to oscillate in said bearings, substantially as specified.

2. The sewing-machine legs, *E*, the vertical double brace *C*, secured thereto and provided with holes to serve as bearings for the treadle *A*, and the treadle provided with trunnions *B* to oscillate in said bearings, in combi-

nation with the cushion F and the block f, as and for the purpose specified.

HERMAN CRAMER.

Witnesses:

Frank W. Street,
Charles L. Street.

After the introduction in evidence of said patent, plaintiff's counsel announced that no claim of infringement was made as to the second claim of the patent, and that the charge of infringement as to said second claim was withdrawn.

Plaintiff then offered in evidence various models and paper documents, and introduced the oral testimony of various witnesses tending to prove all the allegations of the complaint, and then rested his case. Defendant, by its attorney, then moved the Court to instruct the jury to render a verdict for the defendant, on the ground that plaintiff had failed to make out a case. This motion was denied by the Court.

Thereupon, the defendant, in order to maintain the issues raised by its answer, offered in evidence a duly certified copy of the judgment roll in the case of Herman Cramer, plaintiff, v. Willis B. Fry, defendant, No. 11,808, in the Circuit Court of the United States for the Northern District of California. Said judgment roll consisted of the following papers:

1. The original declaration or complaint filed in this court on May 31, 1893, as follows:

“In the United States Circuit Court, in and for the Northern District of California, Ninth Circuit.

“Of the February Term of said Court of the year eighteen hundred and ninety-three.

“HERMAN CRAMER,

Plaintiff,

vs.

THE SINGER MANUFACTURING
COMPANY (a Corporation), and
WILLIS B. FRY,

Defendants.

Declaration.

“The said Herman Cramer, as plaintiff, complains of the Singer Manufacturing Company and Willis B. Fry, as defendants, and for cause of action alleges:

I.

“That the defendant, the Singer Manufacturing Company, is and at all the times hereinafter mentioned was a corporation organized and existing under the laws of the State of New Jersey, and is and at all times herein mentioned was engaged in the business of manufacturing sewing-machines, and selling the same throughout the United States. That as a part of its said business it maintains and conducts, and at all times herein mentioned has maintained and conducted, a branch establish-

ment for selling and trading in sewing-machines at the city and county of San Francisco, State of California, and in the Northern District thereof, and in connection with its said business it has and had at all said times a managing agent in said State and District of California, as plaintiff is informed and so believes the truth to be.

II.

“That the defendant, Willis B. Fry, is the managing agent of said defendant, the Singer Manufacturing Company, in said State and District of California, and is a citizen and resident of said State of California, and the Northern District thereof.

III.

“That heretofore, and prior to the 25th day of May, A. D. 1882, the plaintiff above named was the original, first and sole inventor of certain new and useful improvements in sewing-machines, entitled ‘Improvements in Treadle for Sewing-Machines,’ which were and are fully shown and described in the letters patent hereinafter referred to. That the same was a new and useful invention, and was not known or used by others in this country, nor patented nor described in any printed publication in this or any foreign country prior to the application of said plaintiff for a patent therefor, nor had it been in public use or on sale for two years, nor abandoned, nor was it proved to have been abandoned.

IV.

“That the said plaintiff, being as aforesaid the original and first inventor thereof, did, on the said 25th day of

May, 1882, file his application in the United States patent office for a patent therefor, and thereafter, to-wit, on the 30th day of January, A. D. 1883, letters patent for said invention were issued by the patent office of the United States, and delivered to the said plaintiff, granting unto him, the said plaintiff, his heirs and assigns, for the term of seventeen (17) years from said last-named day, the full and exclusive right and liberty to make, use, and vend the said invention throughout the United States and the territories thereof.

“That the said letters patent were issued in due form of law, under the seal of the patent office of the United States, and were signed by the secretary of the interior, and countersigned by the commissioner of patents of the United States, and were numbered 271,426, and bore date the 30th day of January, A. D. 1883, and were on said last-named day issued and delivered to the said plaintiff, which said letters patent, or a duly authenticated copy thereof, is ready in court to be produced.

“That prior to the issuance of said letters patent, all proceedings were duly had and taken that were required by law to be had or taken prior to the issuance of letters patents for new and useful inventions.

“That by virtue of the premises the plaintiff is now, and during all the times hereinafter mentioned was, the sole and exclusive owner of the invention set forth and claimed in and by said letters patent, and of all the rights and privileges granted and secured thereby.

“Yet notwithstanding the premises, the defendants herein, having full knowledge thereof, and in violation of

the exclusive rights and privileges secured to plaintiff by said letters patent, and utterly disregarding the same, and contriving to injure and damage plaintiff and his said rights since the date of plaintiff's said letters patent, and prior to the commencement of this action, without the license or consent of plaintiff, or any license or authority whatever, in the State of California and Northern District thereof, have wrongfully made, used, and sold sewing-machines containing and embracing the invention described, claimed and patented in and by the letters patent aforesaid.

“That the sewing-machines made, used, and sold by the said defendants were and are, and each of them is and was, an infringement upon said letters patent No. 271,426, and were made and used according to the specification thereof, all contrary to the law and the statutes of the United States, in that behalf made and provided.

“Whereby, and by reason of the premises and the infringement aforesaid, the plaintiff has been greatly injured and damaged and deprived of large royalties, gains, and advantages which he otherwise would have derived, and has sustained actual damages thereby in a large sum, to-wit, one million (\$1,000,000.00) dollars.

“Wherefore, and by force of the statutes of the United States, a right of action has accrued to plaintiff to recover the said actual damages, and such additional sum, not exceeding in the aggregate three times the amount of said actual damages, as the Court may see fit to adjudge and order, besides costs of suit.

“Yet the defendants, though often requested, have never paid the same, nor any part thereof, but have refused and still refuses so to do, and therefore plaintiff brings this suit.

“JNO. L. BOONE and

“CHARLES F. HANLON,

“Attorneys for Plaintiff.

“(Duly verified.)”

2. The original summons in the case issued by the clerk on May 31, 1893, directed to the Singer Manufacturing Co. and Willis B. Fry, and containing the usual allegations of a summons provided by law, together with a return of service by the marshal of the district, upon each of the defendants, dated June 2, 1893.

3. A separate demurrer by the Singer Manufacturing Company alone to the declaration or complaint, alleging and setting up as ground of demurrer that the Court had no jurisdiction over the person of the defendant, the Singer Manufacturing Company, for the reason that said Singer Manufacturing Company was a corporation created under the laws of the State of New Jersey. Which said demurrer was served and filed June 13, 1893, and verified by Willis B. Fry, as agent of the Singer Manufacturing Company.

4. A separate demurrer by Willis B. Fry alone to the declaration or complaint, alleging that the same did not state facts sufficient to constitute a cause of action against him. This demurrer was served and filed on June 13, 1893.

5. An order of said Circuit Court made and entered November 27, 1893, sustaining the demurrer of the Singer Manufacturing Company.

6. An order of Court made and entered on November 27, 1893, overruling the demurrer of said Willis B. Fry to the declaration or complaint of the plaintiff, and requiring said Fry to file an answer within ten days.

7. A cost bill in favor of the Singer Manufacturing Company against Herman Cramer, filed December 23, 1893.

8. A final judgment of said Court in favor of the Singer Manufacturing Company against the plaintiff, Herman Cramer, made and entered December 19, 1893, reading as follows:

“In this cause an order having been made on the 19th day of December, 1893, dismissing the action as to the Singer Manufacturing Company, defendant therein, and ordering that judgment of dismissal with costs and without prejudice to the commencement of another action by plaintiff be entered, now, therefore, by virtue of the law, it is ordered, adjudged, and decreed that the above-entitled action be and hereby is, dismissed as to said defendant, the Singer Manufacturing Company, a corporation, without prejudice to the right of plaintiff to commence another suit for the same cause of action, and that said defendant recover its costs herein taxed at \$14.05. Entered December 9, 1893. W. J. Costigan, Clerk.”

9. A certificate of the clerk to all of the foregoing documents as constituting the judgment roll as against

the Singer Manufacturing Company, dated December 19, 1893.

10. An amended declaration or complaint filed December 18, 1893, in the cause, by Herman Cramer, plaintiff, v. Willis B. Fry, defendant, as the sole and only defendant, charging the said Fry, individually, with infringement of the said patent, without referring to or mentioning the Singer Manufacturing Company, and containing all the necessary and usual allegations in a declaration or complaint for the infringement of a patent.

11. The answer of Willis B. Fry, filed February 8, 1894, to the declaration or complaint of Herman Cramer.

12. An amended answer filed by leave of Court on February 18, 1895, by Willis B. Fry to the declaration of plaintiff, Herman Cramer, denying all the allegations of the declaration, and setting up as affirmative defenses that the patent sued on was anticipated by prior patents and publications, and by prior knowledge and use as follows:

“United States letters patent No. 106,242, bearing date August 9, 1870, and granted to Chas. H. Wilcox, for a ‘sewing-machine table.’”

“United States letters patent No. 148,759, bearing date March 17, 1874, and granted to John Reynolds and George Jacobie, for a ‘treadle for sewing-machines.’”

“United States letters patent No. 230,251, bearing date July 20, 1880, and granted to John E. Donovan, for a ‘sewing-machine treadle.’”

“United States letters patent No. 243,529, bearing date June 28, 1881, and granted to John E. Donovan, for a ‘sewing-machine table, frame, and treadle.’ ”

“United States letters patent No. 256,563, bearing date April 18, 1882, and granted to George W. Gregory, for ‘treadle support for sewing-machines.’ ”

“British letters patent No. 2,232, bearing date June 27, 1874, and granted by the government of Great Britain to Jules Bourdin, for ‘improvements in means for transmitting motive power to sewing-machines.’ ”

“British letters patent No. 2,653, bearing date August 7, 1873, and granted by the government of Great Britain to Josiah Turner, for an ‘improvement in sewing-machines.’ ”

“And further answering defendant avers that he will prove upon the trial of this suit that the alleged inventions and improvements described and claimed, or intended to be described and claimed, in plaintiff’s said letters patent were, and each of them was, long prior to the alleged invention thereof by said plaintiff known to and used by the following named persons during the years from 1862 to 1882, at the following named places, to-wit:

“At Cleveland, Ohio, by R. C. Smith, who now resides at Cleveland, O.

“At Cincinnati, Ohio, by John E. Donovan, J. Skardon, and J. F. Elliott, who now reside at Cincinnati, O.

“At Cincinnati, Ohio, by Wm. M. Burdge, who is now deceased, but who resided at Cincinnati, O.

“At Cincinnati, Ohio, by Mrs. Wm. M. Burdge, who now resides at Cincinnati, O.

“At Hartford, Connecticut, by George A. Fairfield, who now resides at Hartford, Conn.

“At Westfield, Massachusetts, by Albert L. Dewey, Richard E. Morgan and Helen L. Dewey, who now reside at Westfield, Mass.

“At Mount Sterling, Kentucky, by Philip L. Reese, who now resides at Mt. Sterling, Ky.

“At Charlestown, Massachusetts, by Eben W. Keyes, who now resides at Charlestown, Mass.

“At Chicago, Illinois, and in New York City, New York, by James Bolton, who now resides at Chicago, Ill.

“At New York City, New York, by Lebbeus B. Miller, who now resides at Elizabethport, New Jersey.

“At Chicago, Illinois, and at Elizabeth, New Jersey, by Philip Diehl, who now resides at Elizabethport, N. J.

“At Cincinnati, Ohio, by Samuel C. Tatum, who is now deceased, but who resided at Cincinnati, O.”

Said amended answer, after setting forth defendant Fry's denials of any infringement on his own part, contained the further following affirmative defenses:

“Further answering defendant avers that during more than twelve years last past, the Singer Manufacturing Company, which is a corporation created and existing under and by virtue of the laws of the State of New Jersey, and which has its principal place of business in the said State of New Jersey, has been carrying on the business of manufacturing and using and selling sewing-machines of a particular kind, which have been known in the markets of the world as Singer Sewing-Machines.

That the said corporation, the Singer Manufacturing Company, has been doing a very large business during all of said years, and has manufactured and sold during said time a large proportion of all the sewing-machines that have been manufactured in the whole world.

“That during more than twelve years last past the said corporation, the Singer Manufacturing Company, has had and maintained a place of business in the city of San Francisco, in said Northern District of California, where it has carried on a local business in selling the said Singer sewing-machines, and which machines it has sent from its factory in New Jersey to said city of San Francisco for that purpose. Defendant further avers that in carrying on its said business of selling said sewing-machines, the said corporation, the Singer Manufacturing Company, has employed this defendant to act as its employee in making sales of said sewing-machines, and in attending to said local business in said city of San Francisco, and this defendant has acted as the employee of said corporation, the Singer Manufacturing Company, in repairing, and using so far as it was necessary to use them for testing their condition, and in selling the said sewing-machines, and has done whatever was necessary in and about the carrying on of said local business in the city of San Francisco, as the employee of said corporation, the Singer Manufacturing Company, and in no other way or manner whatever. That he has neither made nor used nor repaired nor sold any sewing-machines or sewing-machine treadles in his own right, nor in his own name, but that all the making, repairing, using, and selling of

sewing-machines or sewing-machine treadles that has been done by this defendant, and which is claimed to constitute any infringement of said letters patent, has been the making or repairing or using or selling done and performed by the said corporation, the Singer Manufacturing Company, by and through this defendant, as its employee, and in no other way. That this defendant has not, at any time, been the owner of any sewing-machines or treadles, and has not, at any time, either made or used or repaired or sold any sewing-machines or sewing-machine treadles, or sewing-machine apparatus, or sewing-machine attachments of any nature or kind, otherwise than as employee as aforesaid, or otherwise than as such acts were the acts of said corporation, the Singer Manufacturing Company.

“Further answering defendant avers that if the plaintiff herein has any cause of action arising out of the sale of said or any sewing-machine treadles by defendant, the said cause of action exists against said corporation, the Singer Manufacturing Company, and not against defendant, and that the defendant is not a necessary nor proper party to this action.

“Defendant further avers that this Court has no jurisdiction whatever over the said corporation, the Singer Manufacturing Company, and that this action has been brought against defendant because the plaintiff could not maintain an action in said district against the said corporation, and has been brought for the purpose of vexing and annoying the said corporation, and not because plaintiff has any cause of action whatever against this defendant.

“Further answering defendant avers that the sewing-machine treadles which the said corporation, the Singer Manufacturing Company, has sold through this defendant, as employee of said corporation, as aforesaid, and on account of the sale of which this action has been commenced against defendant, were constructed under and according to the specifications and claims of certain letters patent of the United States, No. 306,469, bearing date October 14, 1884, and issued to Philip Diehl, as assignor to said corporation, the Singer Manufacturing Company; and defendant further avers that ever since the issuance of said last-mentioned letters patent the said corporation, the Singer Manufacturing Company, and this defendant, as their employee as aforesaid, have had the right to make and sell sewing-machines and sewing-machine treadles constructed according to the specifications and claims of said last-mentioned letters patent.

“Defendant further avers that the state of the art relating to the manufacture of sewing-machines and sewing-machine treadles, at the time of plaintiff’s alleged invention and improvement in said treadles, as disclosed by the various letters patent hereinbefore cited, and by the testimony of the parties whose names are hereinbefore especially noticed and set forth, was such that plaintiff’s said alleged invention or improvement, if any existed, was extremely narrow and trivial in its nature, and that the claims of his said patent were not and are not, and none of them has been or is, infringed by the manufacture or sale of treadles constructed according to the description contained in said letters patent issued as

aforesaid to said Philip Diehl, assignor to said corporation.

“Defendant further avers that when said plaintiff made his original application to the United States patent office for his said patent, he represented to said patent office in the specification which accompanied his said application that his invention consisted of a treadle, having a bar with V-shaped ends, and resting in sockets constructed in the brace of the machine, and further represented to said patent office that said V-shaped treadle bar in the brace of the machine constituted the improvement or invention which he claimed. Defendant further avers that the specific elements and details of construction in combination, which are shown and described in the claims of plaintiff’s said patent as they now appear therein, were not included in any claim or claims which accompanied plaintiff’s said original application for said patent. Defendant further avers that plaintiff’s said original application was rejected by said patent office, and that said patent office, at the time of the rejection of said original application, notified said plaintiff that his alleged invention was exhibited in United States letters patent No. 256,563, granted on April 18, 1882, to G. W. Gregory.

“Defendant further avers that upon the rejection of plaintiff’s said original application as aforesaid, the plaintiff filed in said patent office a new and first amended specification, and in his new and first amended specification represented to said patent office and claimed that his invention consisted of the brace of a machine, having

sockets or bearings for a treadle bar, with mufflers at the end of the treadle bar, in combination with the treadle bar itself. Defendant further avers that the specific elements and details of construction in combination which are described and claimed in the claims of plaintiff's said patent, as they now appear therein, were not included in plaintiff's said first amended specification, nor in any claim or claims which accompanied plaintiff's said first amended specification. Defendant further avers that plaintiff's said application, when accompanied by said first amended specification, was again rejected by said patent office, and that said patent office at the time of said last-mentioned rejection, notified said plaintiff that his alleged invention, as described in his said first amended specification, was met by United States letters patent No. 243,529, granted on June 28, 1880, to John E. Donovan.

“Defendant further avers that upon the said last-mentioned rejection of his said application, the plaintiff filed in said patent office a new and second amended specification, and in his said second amended specification represented to said patent office and claimed that his invention consisted in the specific elements and details of construction in combination, as the same now appear and are described and claimed in the claims of plaintiff's said patent.

“Defendant further avers that it was only by thus limiting his claims to the precise combination of specifically mentioned elements and details of construction of which the claims of his said patent are now composed, that

plaintiff was able to obtain the issuance of said patent at all, and that if he had not so limited his claim to invention in said patent office, no patent would have been granted to him at all.

“Defendant further avers that by the aforesaid amendments of his specification, and by so, as aforesaid, limiting his claim to invention, the plaintiff entirely abandoned, in said patent office, any and all claim to a treadle hung or swinging generally in the brace of a machine, and is now estopped from asserting any claim to a treadle hung or swinging in the brace of a machine, excepting in the precise combination and precise manner, and in combination with the precise elements and exact details of construction shown and claimed in the claims of his said letters patent, as the same now appear.”

13. The verdict of the jury in favor of defendant filed April 12, 1895, under instructions of the Court.

14. The judgment of the Court upon said verdict in favor of defendant made and entered April 12, 1895, reading as follows:

“This cause came on regularly for trial. The said parties appeared by their attorneys. A jury of twelve persons was regularly impaneled and sworn to try said cause. Witnesses on the part of plaintiff and defendant were sworn and examined. After hearing the evidence and considering the motion of defendant’s counsel that the jury find a verdict for defendant, it was ordered by the Court that said motion be granted, and thereupon the jury was instructed to return a verdict for the de-

defendant on the ground of noninfringement, which was done as follows: United States of America, Circuit Court of the United States, Ninth Circuit, Northern District of California. Herman Cramer, Plaintiff, v. Willis B. Fry, Defendant, No. 11,808. We, the jury find in favor of the defendant. W. W. Shannon, Foreman.

“Wherefore, by virtue of the law, and by reason of the premises aforesaid, it is ordered, adjudged, and decreed that said defendant (Willis B. Fry) have and recover from said plaintiff (Herman Cramer) the said defendant’s costs and disbursements incurred in this action, amounting to the sum of \$192.65.

“Entered this 12th day of April, A. D. 1895.”

Plaintiff duly objected to the introduction of said judgment roll in evidence as irrelevant, incompetent, and immaterial; and after arguing thereon the Court ruled that before said judgment roll could be introduced in evidence it was necessary for defendant to show what were the relations between the defendant in this case, the Singer Manufacturing Company, and the said Willis B. Fry, named as defendant in the case mentioned in said judgment roll.

Thereupon the defendant called the said WILLIS B. FRY as a witness, who, after being duly sworn, testified that he is the Willis B. Fry who was the defendant in the said suit of Cramer v. Fry mentioned in said judgment roll. And thereupon the following questions were asked and answers given, viz.:

“Q. What relations, if any, did you sustain towards

the present defendant, the Singer Manufacturing Company, at the times of the trial of that suit?"

This question was objected to by plaintiff's counsel as irrelevant, incompetent, and immaterial, because the judgment roll shows that the suit was against Fry individually; that the Singer Manufacturing Company had originally been made a defendant, but they objected to the jurisdiction of the Court; the objection was sustained and the suit dismissed as to them, and it thereafter proceeded against Fry individually, for which reason it makes no difference what relationship the Singer Manufacturing Company bore to Fry in that case, inasmuch as they had already successfully challenged the jurisdiction of the Court, and could not be bound by anything that might occur in that case. The Court overruled the objection, and plaintiff, by his counsel, then and there duly excepted and hereby tenders this, his bill of exceptions, for the Court to sign and seal, and the Court does hereby sign and seal the same. The witness then answered the question as follows:

"I was their general agent for the Pacific Coast, with headquarters here in San Francisco."

The following question was then asked the witness:

"Q. Were you such general agent at the time that suit was brought and during all the times that suit was in court up to the time that the final decree was entered in the suit?"

Plaintiff, by his counsel, objected to this question on the same grounds as before. The objection was overruled, and the plaintiff, by his counsel, duly excepted,

and does hereby tender this, his bill of exceptions, for the Court to sign and seal and the Court does hereby sign and seal the same. The witness then answered the question as follows: "I was and am still such general agent."

The witness was then asked the following question:

"Q. As such general agent, of what did your duties consist during the pendency of that action?"

To this question plaintiff, by his counsel, objected on the same ground as before; the objection was overruled and the plaintiff, by his counsel, duly excepted thereto, and does hereby tender this, his bill of exceptions, for the Court to sign and seal, and the Court does hereby sign and seal the same. The witness then answered the question as follows:

"It was the general management of the company's business here on the coast, looking after their interests in general."

The witness thereafter testified as follows: "That the business of the company here on the coast in which he acted as general agent was the sewing-machine business, selling sewing-machines and collecting, attending to their business generally in the way of keeping the field covered with salesmen; that the territory included the entire Pacific Coast; that during the pendency of that suit his time was all taken up here in court." That he was attending to his regular duties in connection with the business of the Singer Manufacturing Company during all the time.

The witness was then asked the following question:

“Q. Who paid the expense of making the defense of that suit after the suit was dismissed as to the Singer Manufacturing Company and while it was continued against you individually?”

To this question plaintiff, by his counsel, objected as irrelevant, incompetent, and immaterial, and furthermore inasmuch as that suit was a suit to recover damages for a tort, the question of agency could cut no figure, as there are no agents in a tort committed by two persons jointly, but they are all principals.

The Court overruled the objection, and plaintiff, by his counsel, duly excepted, and hereby tenders this, his bill of exceptions, for the Court to sign and seal, and the Court does hereby sign and seal the same.

The witness then answered the question as follows: “The Singer Manufacturing Company.” The witness was then asked this question:

“Q. Who paid the counsel for making the defense in that suit against you?”

To this question plaintiff, by his counsel, interposed the same objection as before, which objection was overruled, and plaintiff, by his counsel, duly excepted thereto, and hereby tenders this, his bill of exceptions, for the Court to sign and seal, and the Court does hereby sign and seal the same. The witness then answered the question as follows: “The Singer Manufacturing Company.”

The witness further testified that in that suit there were depositions taken in the east in behalf of the defendant and models were furnished in connection with those depositions; that he did not have anything to do person-

ally with the taking of those depositions or with the procuring of those models, or with the payment of the expenses of the depositions or models in any way, only so far that he asked the company to furnish him with the information that would be necessary to defend that suit in the way of anything of that kind that would be necessary to use in evidence; that he did not personally furnish his own counsel in defending that suit or counsel for making the defense; that the counsel were in the case in the start when it was commenced against the Singer Manufacturing Company; that the same counsel continued in the case after the suit was commenced against him personally; that at the time he did not know about the expenses, but when bills were finally paid, they were paid by the Singer Manufacturing Company; that the same counsel who defended on behalf of the Singer Manufacturing Company continued to defend the same suit after the demurrer was sustained and the suit dismissed as to that corporation; that there was no new employment of counsel for defending the case when it was afterwards continued against him personally; that the Singer Manufacturing Company paid those counsel for their services all the way through the defense of the action, both before the suit was dismissed as to the Singer Manufacturing Company and afterwards, up to the time that the final decree was entered in his favor; that he never paid a single dollar of the expense of defending that suit out of his own funds; that he knew that the suit was brought against the company and himself jointly in the first place, and was then dismissed as to the company and afterwards continued against him; that after it was dismissed as to

the company, he knew that it was a suit against him individually, for the purpose of obtaining a judgment against him individually for a large sum of money; that the papers in the case were served on him personally, requiring him to file an answer or appearance within ten days; that so far as he knew, he was the only person who was served with papers when the suit was brought, and that he then advised the company that the papers had been served; that he was not sure whether he handed the papers to the attorneys for the company, or received instructions from the company first; that he cannot say whether instructions were given to the attorneys to file a demurrer on behalf of the company, or whether it was the act of the attorneys; that he could not say positively what instructions were given to the attorneys; that the attorneys' fees in that case were all paid direct from the head office of the company; that when the Singer Manufacturing Company filed the demurrer to the jurisdiction of the Court for the purpose of having the suit dismissed as to them and to leave it pending as to him, he knew that if judgment was rendered in that case it would be rendered against him personally; that he had no agreement or understanding with the company that they were to reimburse him if he were mulcted in damages; that the suit went on with this big amount of damages charged against him individually without any agreement of that kind; that he made no arrangements with them regarding it; that the trial consumed over a week, and that he was present at all times during the trial, and testified as a witness and assisted the counsel in the prep-

aration of the defense, and also assisted them in hunting up the evidence, by seeing experts and employing people for the purpose of hunting up machines and facts preparatory to making the defense before coming into court; that one or two of the bills may have been paid through San Francisco; that he could not say who drew checks for such bills; that there may have been some of the bills presented to the attorneys and paid through them, or they may possibly have been paid from the San Francisco office, any small bills; but he could not remember positively as to that; that during all the time he was acting as agent for the Singer Manufacturing Company he received both his salary and a commission on the amount of sales made by the company in this territory; that he did not take any more active part in assisting in the defense of that suit against him individually than he is now taking in the defense of this suit against the Singer Manufacturing Company, in which he is not a defendant, but still the agent of the company.

Thereupon, the following proceedings were had, the said witness Fry being still on the witness stand, namely:

Mr. WHEATON.—Q. Please state whether or not this machine, Exhibit "G," is the identical machine that was introduced in evidence in that case against you.

Mr. MILLER.—We object to that as irrelevant, incompetent and immaterial. It does not seem to me to be the point that your Honor directed him to.

The COURT.—I am inclined to think that is immaterial, unless we go into the whole question of what evidence was offered in the former case.

Mr. MILLER.—The whole evidence would have to be gone into.

The COURT.—Yes.

Mr. OFFIELD.—It seems to me it is relevant in this to show there is no difference upon the question of infringement. To show that the question of infringement determined in that case was precisely the same; and that this is the same machine.

The COURT.—I take it from the evidence already offered that this is the same case tried before. My mind is made up upon that. If the record does not show that, you might be permitted to show it. But I have made up my mind that this is the same case that was tried before. I have looked over the old case and think the patents introduced there are the same as those introduced here. The same evidence is introduced here that was introduced there. I could not well determine that without going over the whole evidence.

Mr. WHEATON.—Notwithstanding your Honor has made up your mind, and you really know it is so, still, I suppose we are required to make out a full case so as to make up the record and show not only that the Singer Company made the fight in that case, but that the same question was litigated and determined by the judgment in that case which they are now litigating here. That is why the machine which was charged to be an infringement in that case by the proof, not by the complaint, but by the proof, is the same identical machine which is charged to be an infringement here; that is this machine made under

and in accordance with the Diehl patent. To show that I thought the quickest way and most certain way was to show that that identical exhibit, not another machine of the same kind, but the same identical exhibit, the standard of the Diehl machine, the standard made under the Diehl patent, was the same identical machine which was introduced as the infringement in that case.

The COURT.—That is going into the evidence. I looked over the decision given by Judge McKenna and the same patents that you have introduced here already, the Diehl patents and the others are referred to.

Mr. OFFIELD.—The descriptive language would identify that machine.

Mr. WHEATON.—If your Honor accepts the decision of Judge McKenna for what he describes in it, I think that provides the evidence.

The COURT.—It refers to the same patents and the model, and I think it refers to the Diehl patent. So far I have my mind made up that the case involved the same matter. If you want to make up something for the record, all right. I do not think it is necessary, because I made up my mind that the cases are the same before I came into court. I examined all those papers. If you go into it and introduce that model, I don't know why you should not introduce all the evidence, and I don't want to go to that extent. I will let you introduce that one model. I don't want to go into the whole evidence.

Mr. MILLER.—I want to be heard upon that. I think it is unfair to introduce one piece of evidence from the

record in that shape. Non constat but there is other evidence.

The COURT.—Very well; I will sustain the objection.

The witness was then withdrawn from the stand and thereupon the Court made the following remarks:

“Realizing the importance of the offer to introduce this judgment roll, I have given the question since yesterday’s adjournment most careful consideration, and whether my conclusion is right or wrong, it is fixed, which I will now give you briefly, stating my reasons in an informal way.

“Of course it is well settled that a judgment rendered upon a matter in litigation, is a bar to another suit upon the same matter between the same parties or their privies. I have no question that the case litigated in the former suit was precisely the same as is here upon trial now. I have no question that the plaintiff in that suit is the plaintiff here. The important question is, whether or not the parties defendant in that suit and this, not being the same, are within the law of privies: whether or not Mr. Fry was a privy, in the legal sense, of the defendant company. If he is, as a matter of course the judgment in that case would be a bar to this. Concerning this question let us briefly examine the authorities cited by counsel.

“Upon behalf of the plaintiff, counsel cited *Cromwell v. County of Sac*, 94 U. S. In that case the Court did not modify the long-established doctrine of *res adjudicata*, but it found that the subject matter of the action was not the same as that litigated in a prior action; that the two actions were for different causes, and that therefore the judgment in the one was not a bar to the jurisdiction of the other.

“The case of *Altschul v. Polack*, 55th California, 633, was a suit against a tenant. The question was whether or not the landlord would be bound by the judgment in that case. It seems that the Court held that under certain circumstances a landlord would be bound, but the evidence which the landlord introduced was stricken out, and in view of that the Court held that he could not be bound by the prior judgment. I will simply read from the head-notes in that case to show the view of the Court, without taking time to read from the decision: ‘If a landlord defends for and in the name of his tenant, and puts his title in issue in aid of the tenant’s right of possession, a judgment against the tenant is a bar to a subsequent action by the landlord against the party recovering the judgment. But it must appear that the subject matter or question was not only the same, but that it was submitted on the merits, and actually passed upon by the Court.’

“The Court there holds that where the landlord appears and defends or takes part in the defense, that he would be bound by the judgment. But the next head-note recites that the testimony of the landlord was stricken out, and therefore he had no part in the case, and was not bound by the prior judgment.

“In the case of *Litchfield v. Crane*, 125 U. S. 199, while the same principle was involved there in the two cases, the same subject matter was not. In one case it was concerning taxes against one party, while the other case was concerning other but similar taxes against another party. Of course the same principle of law was involved in each case. But the settlement of a principle in one case will

not prevent the trial of that same principle in another case between other parties. The defendant parties were entirely different. I do not think either of these control or are applicable to this.

“Among the cases which I have examined is that of *Robbins v. Chicago City*, 4th Wallace, page 657, which seems to me an important one, and largely settles the principle involved here. This was a case in which, in the city of Chicago, a party who owned land abutting on the street, was making certain improvements in the street, and left them in such a condition that at night a party fell into the excavations and was injured. He brought suit against the city of Chicago and recovered judgment in the sum of \$15,000. The city of Chicago then brought an action against the owner of the abutting property whose carelessness had caused the injury. That party had not appeared in the action against the city of Chicago, but stood by. I do not know but that he may have assisted somewhat in furnishing the testimony. At all events, he knew the suit was pending, but he took no active part in it. The Court held in that case that it was a suit in which he might have taken a part and should have taken notice of, and he was bound by the judgment recovered against the city of Chicago, and could not in another action dispute its validity.

“In the case of *Lovejoy v. Murray*, 3d Wallace, page 1, a similar ruling was had. An action of attachment had been brought and the party claiming the attached property gave an indemnity bond. Subsequently the sheriff was sued for disposing of the property in pursuance of

this bond. A judgment was recovered against him. The Court held that it was the duty and privilege of the party who gave the bond to defend the suit against the sheriff, and that he should not enter into a new suit to contest the validity of the judgment recovered against the sheriff, but was bound by it.

“The Supreme Court has very clearly, in these cases, announced the principle that where it is the duty of a party or he has a right to come into an action and defend, and fails to do so, he is bound by the judgment recovered. The same principle will apply here. Those cases simply announce the general doctrine.

“But there are other cases that are more specific. The case of the Eagle Manufacturing Co. v. Miller, 41st Federal, 351, directly applies. I read from page 357: ‘From the evidence in the case it appears that the defendants, W. L. Miller and L. W. Miller, are the agents for Mast & Co., in Iowa, and that the machines sold by them were manufactured by the Mast & Co. Company, and that the company, through its attorneys and agents is in fact conducting the defense of the case. The complainant filed an amendment to the original bill, making the Mast & Co. Company a party defendant, but no subpoena was issued or served upon the corporation, and that company never answered the bill, nor in its own name has it entered its appearance in the case. Under the rule recognized in *Lovejoy v. Murray*, 3 Wall. 1, and *Robbins v. Chicago*, 4 Wall. 657, it is clear the Mast & Co. Company will be as fully bound by the results of the present litigation, as though the corporation was a party to the record; for

it is made clear that it is the principal party in interest, being the manufacturer of the machines sold by defendants Miller, and bound by contract with them to protect them against the consequences of infringement.'

"True, this is not a case decided by an appellate court, but the case of the David Bradley Manufacturing Company v. The Eagle Manufacturing Company, 57 Federal, 980, is decided by the Circuit Court of Appeals. I need read but very little of it. The Court says at page 985: 'The suit in the Circuit Court of the United States for the Southern District of Iowa, was brought to restrain the infringement of the same claims of the same patent here in question. The defendant there was the agent for the present appellant in the sale of the infringing machines. The defense of the suit there was assumed and prosecuted by the appellant here. The appellant was, in fact, the real parties to that litigation, and, so far as the decree there is res adjudicata, is as effectively concluded thereby as if it were the actual defendant to the record.'

"In that case the defendant was referred to in the statement of facts as another company. It is stated that: 'The bill, besides the usual averment in such suits, charges that in December, 1897, the complainant (the present appellee) commenced suit by bill in chancery against David Bradley & Co., in the Circuit Court of the United States for the Southern District of Iowa, to restrain the said David Bradley & Co. from infringing the aforesaid letters patent; that the said David Bradley & Co. was a branch house of the David Bradley Manufacturing Company, the defendant herein.'

“It would seem from the statement of facts, as well as the decision itself, that while David Bradley & Co. was a branch house, it was still acting as the agents of the Bradley Manufacturing Company, so that this house occupied simply the position of agents to the manufacturing company. The turning point of these cases is that the parties against whom the judgments were rendered, and which was held as *res adjudicata*, were the agents of the other parties.

“By the evidence of the witness Fry, just upon the stand, it is very evident that he was nothing more than the agent of the Singer Manufacturing Company. He had no responsibility in the former suit, and it was indifferent to him personally as to how that suit may have been concluded, because the company was to protect him.

“There is one item of his testimony that comes within a decision away back in the 4th Federal—I do not remember the title of the case now—where an agent was paid simply a commission. It was there held that the company was not responsible for his acts, and that a judgment against him would not bar it. But in this case the agent Fry seems to have received but part of his pay in commissions. He was nevertheless an agent in the full sense of the term, for whose acts the defendant company is responsible. Moreover, it appears from his testimony that the company did defend the former suit, paid all the expenses of the defense, and that therein he acted only as the agent of the company.

“I should not have a moment’s hesitation, if that former action had gone against the defendant, in now saying

that it was *res adjudicata* as to this defendant in this suit, and they would be bound by it. I do not know any reason why the same rule should not apply here, and that it should have the benefit of it.

“While I am greatly averse to taking a case from a jury, yet I must come to the conclusion that that former judgment can be introduced here as evidence, which virtually amounts to a determination of the case, as I understand it. I will therefore overrule the objection to the introduction of this judgment roll.”

To this ruling counsel for plaintiff duly excepted and does hereby tender this, his bill of exceptions, for the Court to sign and seal, and the Court does hereby sign and seal the same. The said judgment roll was then marked “Defendant’s Exhibit 3.” Immediately thereupon the following proceedings were had:

Defendant’s counsel then offered in evidence the opinion and decision of his Honor, Judge McKenna, in the former case, to which plaintiff’s counsel objected as irrelevant, incompetent, and immaterial, whereupon the Court said: “It may not be the best evidence, but it is certainly evidence. At all events, I consulted it to aid me in arriving at the conclusion that I reached, that the two cases are the same, although I had virtually reached that conclusion from other facts.” The objection was overruled, and plaintiff, by his counsel, duly excepted and does hereby tender this, his bill of exceptions. The said opinion and decision was thereupon admitted in evidence and marked “Defendant’s Exhibit 4,” and is found reported

in volume 68 of Federal Reporter, beginning at page 201, and is hereby referred to and made a part hereof.

“Mr. WHEATON.—I now renew the motion for the Court to instruct the jury to bring in a verdict for the defendant.

“Mr. MILLER.—I ask the counsel if he rests his case. It is not proper to ask for that instruction until the parties rest and the case is submitted to the Court. If counsel has any more evidence to put in I want it in now, and not take two bites at a cherry. I want to close the case once and for all. Counsel does not know what rebuttal testimony we may have, and if he has any more testimony of his own I want it all put in before we put in our rebuttal and go to the jury.

“Mr. WHEATON.—Our testimony is closed upon this issue raised in our answer of the former adjudication, because we have introduced the proof which sustains that issue in our behalf, and it is the proper time to move the Court to instruct the jury to bring in a verdict for the defendant. If the Court overrules that motion, why, then, we go on with the trial of the other branch of our defense. Our case is closed as to this branch of the defense.

“Mr. MILLER.—I want now on the record that this case is closed. Counsel says on one branch.

“Mr. WHEATON.—I do not propose to go upon the record as shutting my clients out from making any further defense if it becomes necessary for them to do it.

“The COURT.—It cannot cut you out. I will close this

controversy by saying I am ready to instruct the jury. Gentlemen of the jury, it is not necessary for me to make any extended remarks.

“Mr. MILLER (Interrupting).—Will your Honor let me enter an exception before you give the charge? I do not think the case is in shape to do it.

“The COURT.—Put your exception in any form you desire.

“Mr. MILLER.—I note an exception to the charge which the Court announces it will make to the jury, upon the ground that the record does not show the facts necessary to make the prior case of *Cramer v. Fry* res adjudicata in this case; and that it does not show that it was the same case as that of *Cramer v. Fry*. Furthermore, it does not show that the former case against Fry was defended by the Singer Manufacturing Company openly or to the knowledge of the plaintiff in that case; but, on the contrary, it appears that it was defended by Willis B. Fry, the defendant in that case, and not by the Singer Manufacturing Company, and it was not known to the plaintiff in that case to have been defended by the Singer Manufacturing Company, and in the view we take of the case, if a judgment had been rendered in favor of Cramer, in that case it would simply have been a personal judgment for damages against Fry, and would not have been binding on the Singer Manufacturing Company. Furthermore, inasmuch as that will show lack of mutuality on the question of estoppel, it cannot operate as an estoppel or res adjudicata in this case. Lastly, the taking of the case away from the jury at this time is preventing

the plaintiff from putting in any rebuttal testimony, which he is ready and prepared to put in."

These objections were all overruled, to which plaintiff, by his counsel, duly excepted, and does hereby tender this, his bill of exceptions, for the Court to sign and seal, and the Court does hereby sign and seal the same.

Thereupon the Court instructed the jury peremptorily to find and return a verdict for the defendant, to which ruling plaintiff, by his counsel, duly excepted and hereby tenders this, his bill of exceptions, for the Court to sign and seal, and the Court does hereby sign and seal the same.

The jury then returned a verdict in favor of defendant under the said instructions of the Court.

The foregoing bill of exceptions contains all the testimony, evidence, and proceedings had and taken at the trial material to the errors complained of.

And be it further remembered that the verdict of the jury and the judgment of the Court thereupon were made, rendered, and entered in this case on the 12th day of August, 1898; that thereafter, by stipulations of counsel duly and regularly made, entered, and filed, the time for the plaintiff to propose his bill of exceptions was extended to and including the 23d day of August, 1898; that on said 23d day of August, 1898, plaintiff, by his counsel, duly and regularly proposed and served upon counsel for defendant said proposed bill of exceptions, but did not file the same with the clerk of the court until the 26th day of August, 1898; that on August 25th, 1898, defendant, by its counsel, duly and regularly proposed, served, and filed

its proposed amendments to the plaintiff's said proposed bill of exceptions, without making known or interposing or reserving any objection to the fact that the plaintiff's proposed bill of exceptions had not been filed at that time; that thereafter, to-wit, on August 26th, 1898, plaintiff, by his counsel, duly and regularly served upon counsel for the defendant a notice objecting to defendant's proposed amendments to said proposed bill of exceptions, and notifying counsel that he would present the proposed bill of exceptions and amendments to the Judge of the court who tried the case, on the 29th of August, 1898, for settlement, and on the same day, to-wit, on August 26th, the said proposed bill of exceptions of the plaintiff, and his said notice of objection to the proposed amendments of defendant and notice of time and place of settlement, as aforesaid, were filed with the clerk of the court; that thereafter, to-wit, at the time and place stated, to-wit, on August 29, 1898, counsel for plaintiff and defendant duly appeared before said Judge for the settlement of said bill of exceptions, and the same was then and there settled and allowed by the said Judge, notwithstanding the objection aforesaid made by defendant's counsel as to plaintiff's failure to file any bill of exceptions within the ten days after trial, which said objection said counsel stated he still reserved.

Now, therefore, in order that the foregoing proceedings and errors may be and appear of record, to the end that right and justice may be done, the foregoing is hereby settled and allowed as and for, and hereby certified to be, a full, true, and correct bill of exceptions.

The foregoing bill of exceptions is hereby certified to be correct.

J. H. MILLER,
Plffs. Atty.

Dated August 29, 1898.

JAS. H. BEATTY,
Dist. Judge, Presiding as Circuit Judge at the Trial of
the Case.

[Endorsed]: Filed September 1st, 1898. Southard
Hoffman, Clerk.

*In the Circuit Court of the United States, for the Northern
District of California.*

HERMAN CRAMER,

Plaintiff.

v.

SINGER MANUFACTURING COM-
PANY,

Defendant.

} No. 12,259.

Petition for Writ of Error.

Herman Cramer, the plaintiff in the above-entitled action, feeling himself aggrieved by the verdict of the jury and the judgment entered thereupon on the 12th day of August, 1898, whereby it was adjudged that defendant had not been guilty of an infringement of plaintiff's patent sued on herein, and that defendant was entitled to judgment for its costs, comes now, by John H. Miller, his

attorney, and petitions said Court for an order allowing him, the said plaintiff, to prosecute a writ of error to the Honorable United States Circuit Court of Appeals, for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided; and also that an order be made fixing the amount of security which the plaintiff shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this court be suspended, stayed, and superseded until the determination of said writ of error by the said United States Circuit Court of Appeals for the said Ninth Circuit.

And your petitioner will ever pray, etc.

J. H. MILLER,
Attorney for Plaintiff.

[Endorsed]: Filed Sept. 1, 1898. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk .

In the United States Circuit Court of Appeals for the Ninth Circuit.

HERMAN CRAMER,	}
Plaintiff in Error,	
vs.	
SINGER MANUFACTURING COM- PANY,	}
Defendant in Error.)	

Assignment of Errors.

Now comes Herman Cramer, plaintiff in error herein, by John H. Miller, his attorney and counsel, and specifies

the following as the errors upon which he will rely, and which he will urge upon his writ of error in the above-entitled action, to-wit:

I.

That the Circuit Court of the United States for the Northern District of California erred in overruling the objection of plaintiff to the following question asked of the witness Fry by defendant's counsel:

"Q. What relations, if any, did you sustain towards the present defendant, the Singer Manufacturing Company, at the time of the trial of that suit?" and in permitting the witness to answer the question as follows: "I was their general agent for the Pacific Coast, with headquarters here in San Francisco."

II.

That the said Court erred in overruling the objection of plaintiff to the following question asked of the witness Fry by defendant's counsel:

"Q. Were you such general agent at the time that suit was brought and during all the time that suit was in court, up to the time that the final decree was entered in the suit?" and in permitting the witness to answer the question as follows: "I was and still am such general agent."

III.

That the said Court erred in overruling the objection of plaintiff to the following question asked of the witness Fry by defendant's counsel:

“Q. As such general agent, of what did your duties consist during the pendency of that action?” and in permitting the witness to answer the question as follows: “It was the general management of the company’s business here on the coast, looking after their interests in general.”

IV.

That the said Court erred in overruling the objection of plaintiff to the following question asked of the witness Fry by defendant’s counsel:

“Q. Who paid the expense of making the defense of that suit after the suit was dismissed as to the Singer Manufacturing Company, and while it was continued against you individually?” and in permitting the witness to answer as follows: “The Singer Manufacturing Company.”

V.

That the said Court erred in overruling the objection of plaintiff to the following question asked of the witness Fry by defendant’s counsel:

“Q. Who paid the counsel for making the defense in that suit against you?” and in permitting the witness to answer as follows: “The Singer Manufacturing Company.”

VI.

That the said Court erred in overruling the objection of plaintiff to the introduction in evidence of the judgment roll of the case of Cramer v. Fry, and in allowing and admitting said judgment roll in evidence.

VII.

That the said Court erred in overruling the objection of plaintiff to the introduction in evidence of the opinion of the Court in the case of Cramer v. Fry, and in allowing and admitting said opinion in evidence.

VIII.

That the said Court erred in instructing the jury to render a verdict in favor of defendant.

IX.

That the said Court erred in ruling that the judgment in the case of Cramer v. Fry was and is a bar to a recovery by plaintiff in this action.

X.

That the said Court erred in ruling that the matters in controversy in this case had become and are res adjudicata, by reason of the judgment in the case of Cramer v. Fry.

XI.

That the said Court erred in not allowing the plaintiff to put in rebuttal testimony.

XII.

That the said Court erred in not allowing plaintiff an opportunity to put in rebuttal testimony.

XIII.

That the said Court erred in proceeding to instruct the jury before all the testimony had been put in; and

XIV.

That the said Court erred in proceeding to instruct the jury before plaintiff had an opportunity to put in rebuttal testimony.

All of which is respectfully submitted.

J. H. MILLER,

Attorney for Plaintiff in Error.

[Endorsed]: Filed Sept. 1, 1898. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

At a stated term, to-wit, the July term, A. D. 1898, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the city and county of San Francisco, on Thursday, the 1st day of September, in the year of our Lord one thousand eight hundred and ninety-eight.

Present: Honorable JAMES H. BEATTY, District Judge, District of Idaho, assigned to hold and holding Circuit Court.

HERMAN CRAMER

vs.

SINGER MANUFACTURING COMPANY.

} No. 12,259.

Order Allowing Writ of Error.

Upon motion of John H. Miller, Esq., attorney for plaintiff, and upon the filing of a petition for writ of error, to-

gether with an assignment of errors herein, it is ordered that a writ of error to the Circuit Court of Appeals for the Ninth Circuit be allowed as prayed in said petition, that the amount of the bond to be given by plaintiff upon said writ of error be, and hereby is, fixed at the sum of five hundred dollars, and that upon the giving of such security all further proceedings in this court be suspended, stayed, and superseded pending the determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit.

—————

*In the Circuit Court of the United States for the Northern
District of California.*

HERMAN CRAMER,

Plaintiff,

vs.

SINGER MANUFACTURING COM-
PANY,

Defendant.

} No. 12,259.

Bond on Appeal.

Know All Men by These Presents, that we, C. L. Hovey and S. J. Hendy, as sureties, are held and firmly bound unto the Singer Manufacturing Company in the full and just sum of five hundred (\$500), to be paid to the said Singer Manufacturing Company, its successors and assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 2nd day of September, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas, lately at a session of the Circuit Court of the United States, for the Northern District of California, in a suit then and there depending between Herman Cramer, plaintiff, and the Singer Manufacturing Company, defendant, a final judgment was rendered, made, and entered in favor of the said defendant, the Singer Manufacturing Company, and against the said plaintiff, the said Herman Cramer, for the sum of \$56.40-100 as costs; and

Whereas, the said plaintiff has obtained from said Court a writ of error to reverse the judgment aforesaid; and

Whereas a citation directed to the said Singer Manufacturing Company has been or is about to be issued, citing and admonishing it to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, California.

Now, the conditions of the above obligation is such, that if the said Herman Cramer shall prosecute his writ of error to effect, and shall answer all damages and costs that may be awarded against him if he shall fail to make his plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

C. L. HOVEY. [Seal]

S. J. HENDY. [Seal]

United States of America, }
 Northern District of California. } ss.

C. L. Hovey and S. J. Hendy, being duly sworn, each for himself deposes and says that he is a freeholder in said district, and is worth the sum of five hundred dollars, exclusive of property exempt from execution, and over and above all his debts and liabilities.

C. L. HOVEY.

S. J. HENDY.

Subscribed and sworn to before me this 2nd day of September, 1898.

[Seal]

JAMES MASON,

Notary Public in and for the City and County of San Francisco, State of California.

Form of the within bond and the sufficiency of the sureties approved this 2nd day of September, 1898.

JAS. H. BEATTY,

Judge.

[Endorsed]: Filed September 3rd, 1898. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

HERMAN CRAMER,	Plaintiff,	}	No. 12,259.
vs.			
SINGER MANUFACTURING COMPANY,	Defendant.		

Clerk's Certificate to Record.

I, Southard Hoffman, Clerk of the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California, do hereby certify the foregoing ninety-seven (98) written pages, numbered from 1 to 97, inclusive, to be a full, true, and correct copy of the record and of the proceedings in the above and therein entitled cause, as the same remains of record and on file in the office of the clerk of said court, and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing return to writ of error is \$56.30, and that said amount was paid by the plaintiff herein.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this 3d day of September, A. D. 1898.

[Seal]

SOUTHARD HOFFMAN,

{ United States Revenue }
Stamp, Canceled
Sept. 3, 1898. }

Clerk of United States Circuit Court,
Ninth Judicial Circuit, Northern District of California.

Writ of Error.

UNITED STATES OF AMERICA—ss.

The President of the United States, to the Honorable, the Judges of the Circuit Court of the United States for the Ninth Circuit, Northern District of California, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between Herman Cramer, plaintiff in error, and Singer Manufacturing Company, a corporation, defendant in error, a manifest error hath happened, to the great damage of the said Herman Cramer, plaintiff in error, as by his complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, on the 12th day of September next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Citation.

UNITED STATES OF AMERICA—ss.

The President of the United States, to Singer Manufacturing Company, a corporation, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, on the 12th day of September next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States, Ninth Circuit, Northern District of California, in a certain action numbered 12,259, wherein Herman Cramer is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable JAMES H. BEATTY, District Judge District of Idaho, designated to hold, and holding, Circuit Court, Ninth Circuit, Northern District of California, this second day of September, A. D. 1898.

JAS. H. BEATTY,
Judge.

Service of within citation and receipt of a copy thereof is hereby admitted this 3rd day of Sept., 1898.

WHEATON & KALLOCH,
Attorneys for Deft. in Error.

[Endorsed]: Filed September 3rd, 1898. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

[Endorsed]: No. 472. In the United States Circuit Court of Appeals for the Ninth Circuit. Herman Cramer, Plaintiff in Error, v. Singer Manufacturing Company, Defendant in Error. Transcript of Record. In Error to the United States Circuit Court, Ninth Judicial Circuit, Northern District of California.

Filed September 3d, 1898.

F. D. MONCKTON,
Clerk.

